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IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

JUSTIN HOLDER	*	
PLAINTIFF	*	
VS.	*	CASE NO.: C-21-CV-23-36
FREDERIC FREDERICK,	*	
BENJAMIN ESTES, LISA ESTES	*	
DEFENDANTS	*	

****

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Hagerstown, Maryland
April 25, 2023
9:44 A.M.

BEFORE:
The Honorable William Nicklas, Senior Judge

Appearances:
For the Plaintiff: Justin Holder, Pro se
For the Defendants: Benjamin Estes, Esquire
James Steele, Esquire

Transcribed from electronic recording by:
Tracy L. Zamora, Court Reporter
Circuit Court for Washington County, MD
24 Summit Avenue, Suite 302
Hagerstown, Maryland 21740
240-313-2548

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P R O C E E D I N G S

THE COURT: We'll call Holder versus Frederic Frederick, et al., 23-36. If you'll stand up please? And introduce yourselves.

MR. HOLDER: Justin Holder, plaintiff.

THE COURT: Good morning, sir.

MR. HOLDER: Good morning, your Honor.

MR. ESTES: Good morning, your Honor. May it please the Court, Benjamin Estes. I'm a defendant in the, um, in this case. I also entered my appearance last night on behalf of my wife, Lisa Estes, who is also a, um, co-defendant in this matter, and I am a practicing attorney, haven't practiced law in any real, uh, way since 2006, but I have been admitted to practice law in the State of Maryland.

THE COURT: Okay. And you waive, uh, your wife's appearance?

MR. ESTES: Yes I do.

THE COURT: All right. Yes sir?

MR. STEELE: Your Honor, if I may, my name is James Steele and I represent the Frederick party defendants in this case.

THE COURT: Come on up.

MR. STEELE: Thank you.

THE COURT: You're at issue.

MR. STEELE: Thank you.

THE COURT: Anybody hear representing Mr. Dowling?

MR. ESTES: I do not believe so.

THE COURT: Because he's also at issue because he filed a motion and you filed an answer and if you want to we'll take argument on everything, including your case. You ready to argue your case as well, counsel?

MR. STEELE: Yes your Honor.

THE COURT: All right. Okay. You can have a seat. We'll start with, it's your motion to dismiss.

MR. ESTES: Very well. Thank you, your Honor. First, I would just like to apologize. As I - - As I mentioned just a moment ago, I have been admitted to practice law in the State of Maryland. I haven't practiced law substantively since probably 2006. I am an attorney. I am allowed to practice in front of this Court, but I am a practicing pharmacist and a manager of about five people in the capacity for Johns Hopkins University. So if for some reason - -

THE COURT: Just so that the plaintiff knows, you have I have never met, have we?

MR. ESTES: No, I have not. I have not met you.

THE COURT: I did not recognize your name, although I'm from Frederick County, I'm not, uh, Washington County.

MR. ESTES: That's correct. I believe Ms. Peoples who is in the court, has practiced with you in Frederick, but I don't believe that I have.

THE COURT: Okay. And I would come to Frederick as a lawyer, but I - - I don't recall you at all, so - -

MR. ESTES: No. No I did have some cases in Frederick.

THE COURT: I don't mean any disrespect by that; it's just don't know - - didn't know you.

MR. ESTES: No, no it's been 17 years or so since I - - since I've practiced law and really my prior experience in the law was as a criminal defense attorney. I've handled a few small civil cases, notwithstanding the number of cases Mr. Holder has filed against me and that are involving Mr. Holder, I really haven't had any true involvement in the law for at least 17 years or so.

So I just want to apologize up front if - - if I don't follow the exact formalities of a motion to dismiss. I know each judge has their own way of conducting these hearings. I'm unfamiliar with the way you like to practice these - - these hearings and so if I run awry of how you like to have things performed, please let me know.

THE COURT: Well I can't imagine you will. The, uh - - You're going to argue your - - your motion.

MR. ESTES: Very well.

THE COURT: You'll argue your motion and I'll let you argue both of them, uh, and Mr. Dowling as well and then, I'll, uh, I'll decide whether I want to take a break, or I'll go right to rule. All right?

MR. ESTES: Very well, your Honor.

THE COURT: And I will say, for the record, I have reviewed the file. I have read your pleading several times. I've read you all's motions. I read the motion from the attorney for Mr. Dowling, and I have read your oppositions. Okay?

MR. HOLDER: Thank you, your Honor.

THE COURT: All right.

MR. ESTES: Just as a preliminary matter, I know Mr. Holder had made an objection last night to me appearing as an attorney for my wife. Although I appreciate Mr. Holder's concern for my wife's wellbeing, I don't think there's any issue with me practicing.

THE COURT: I don't think - - You can object, but you can't stop it. If he's an attorney, he has a right to enter his appearance if his wife has given him permission and the Court has no object - - alternative but to accept that. We - - If she had chosen another practicing attorney somewhere, it is her right to do that. Okay?

MR. HOLDER: I understand - - I understand, your

Honor, thank you.

THE COURT: All right you may proceed.

ARGUMENT

MR. ESTES: Sure, thank you, your Honor. I'd like to proceed, if I may, just by providing the Court with a little bit of procedural background. I'm not - -

THE COURT: I'm sorry, I'm going to stop. Are you an attorney, sir?

MR. KLINE? I am, your Honor.

THE COURT: Are you here for Mr. Dowling?

MR. KLINE: I am not.

THE COURT: Okay.

MR. KLINE: I'm - - I'm counsel for Uncle Eddie's Brokedown House.

THE COURT: Okay.

MR. KLINE: I'm not in this motion.

THE COURT: Okay. All right.

MR. KLINE: I'm not involved. Just observing. Thank you, your Honor.

THE COURT: That's fine.

MR. ESTES: I do believe Uncle Eddie's is known as an interested party in this matter.

THE COURT: Oh they're a defendant. They are a defendant in this matter.

MR. ESTES: Fair enough. Very well, your Honor. Um,

so if I could and if I may, I'd just like to provide the Court with a little bit of background regarding, not only this case, but a companion case, which is case, I call it case 430, which is a quiet title matter involving both me, who is the plaintiff in that matter, Mr. Holder, who is a defendant in that matter, Uncle Eddie's, who is a defendant in that matter.

THE COURT: You're talking about the one that was most recently decided by Judge Wilkinson?

MR. ESTES: That's correct, your Honor.

THE COURT: I'm familiar with it.

MR. ESTES: Okay. I just, um, I don't know if you - - if you need any background regarding the case.

THE COURT: I'm not going to tell you what to argue. You argue what you would like to do.

MR. ESTES: Sure. Sure. I'd just like - - like it to be known that almost all of the issues – title issues, property issues, arguments pertaining thereto, made by Mr. Holder in his complaint are already argued, litigated to finality in case 430, the companion case that was already in front of Judge - -

THE COURT: So your argument is that it's barred by collateral estoppel.

MR. ESTES: That is correct, your Honor.

THE COURT: Okay.

MR. ESTES: That's part of it and I can get to that later on. If for the - - If for some reason that - - that the Court finds that - - That case has been appealed by Mr. Holder, by his wife, Mrs. Holder, and by Uncle Eddie's to the Court of Special Appeals. And if for some reason the Court finds that, um, that it can't dismiss this case for reasons of collateral estoppel because there is a pending appeal on that matter, then I believe a motion to stay this proceeding pending the outcome of the decisions in the appeal court in that matter, may be warranted. But even before we get to that, I'd just like to argue the merits of - - for dismissal of each of the individual counts as has been presented in the plaintiff's complaint because clearly they are insufficient to withstand a motion to dismiss, standing on their own, issues of collateral estoppel, notwithstanding. So - -

THE COURT: Is there any issue of statute of limitations? Because that was argued - -

MR. ESTES: It was argued - -

THE COURT: - - by, um, one of the attorneys.

MR. ESTES: That's correct. Um, my deed - - There is, your Honor. My deed was recorded I believe in 2013. I have a copy of that deed if you would like to have that. I've offered it to Mr. Holder. He says he does

not need it. And it's accompanying, um, plat 9186, which, um, is the property as described in the Estes Deed. I have copies of those. Those deeds, my deed was recorded way back in 2013, some 10 years ago. So insofar as any of his arguments pertain to statements made in my deed or in the recorded deed 9186, which is referenced in - - in my deed - -

THE COURT: Could you keep your voice up a little bit. The people right outside the door.

MR. ESTES: Sure.

THE COURT: I have tinnitus to I need to be able to hear you.

MR. ESTES: Okay.

THE COURT: Okay?

MR. ESTES: Sure and I apologize. My wife, um, says that I mumble all the time and she can't understand me either, so - -

I do believe - - I don't know how much you heard, but I do believe that there are some - -

THE COURT: Well I heard it all but - -

MR. ESTES: Okay.

THE COURT: - - you were kind of easing down and I didn't want you to get to where I couldn't hear ya.

MR. ESTES: Very well. Very well, your Honor. If you would like a copy of that deed and its accompanying -

-

THE COURT: I don't think it's necessary.

MR. ESTES: Okay, very well. So yeah, these were recorded some 10 years ago, your Honor, well outside the statute of limitations, which I believe is three years in this matter.

Now there are agreeably some cases which are pending and which some statements were made by, uh, Mr. Dowling and Mr. Frederick perhaps, but in my mind, this all should be dismissed for violation of the statute of limitations as well.

THE COURT: All right.

MR. ESTES: Um, as to the other counts, if I may, I'd like to start with count five, almost in the middle. I'll go five, six, seven, eight, nine and then come all the way back to - - to count one, um, through four.

Count five is where Mr. Holder, um, argues for loss of consortium with his wife. Clearly, Mrs. Holder is not a party to this action.

THE COURT: Yes she is, she's a defendant.

MR. ESTES: I believe she's a - -

THE COURT: Is - -

MR. ESTES: - - an interested party, not a defendant, your Honor.

THE COURT: Okay, so she's a defendant.

MR. ESTES: I'm not sure that that's - -

THE COURT: What difference does it make? That's not what an interested party is. She's a defendant in this matter. She and Uncle Eddies are both defendants.

MR. ESTES: I do not believe that that's the case, your Honor. I believe that he's noted them - -

THE COURT: He noted them as interested parties.

MR. ESTES: That does not - - Very well.

THE COURT: Okay? I have no idea what that means in this context.

MR. ESTES: Um-hmm.

THE COURT: The only thing in this context this means is that they are party defendants. They're not - -

MR. ESTES: So he - -

THE COURT: There's not - - An interested party is when - - there's - - There is a - - an estate and you've got all these people who are interested parties potentially with a claim against the estate. And there is some kind of a claim that they can make as part of something else. That's not what this - - That's not what these counts are. It's not that kind of a thing.

MR. ESTES: Very well, your Honor. Even if she's - -

THE COURT: We're talking about negligence and - -

MR. ESTES: Even - - Even if she is a party defendant, which I do not believe that she is, she's

listed as an interested party, she still has not signed the complaint, she is not - -

THE COURT: I'm telling you; I find that she is a party defendant.

MR. ESTES: Very well. She still has not signed the complaint, your Honor. Um, and if she is a defendant, your Honor, she is not - -

THE COURT: Well she wouldn't have to sign it.

MR. ESTES: - - suing me as a defendant. There's no issue there.

THE COURT: I understand. You don't have to argue loss of consortium.

MR. ESTES: Very - - Very well.

THE COURT: It has to be filed by both husband and wife. That's just - -

MR. ESTES: That's right.

THE COURT: I used to do a lot of personal injury work as a lawyer and that came up many times.

MR. ESTES: And it's my contention that it's not brought by both parties.

THE COURT: It's not.

MR. ESTES: Very well.

THE COURT: She's not a party-plaintiff.

MR. ESTES: That's correct. So for that reason alone, loss of consortium should be, uh, dismissed.

Moreover, if the Court would like to hear anymore, which I don't believe it does, you know - -

THE COURT: On loss of consortium?

MR. ESTES: Yeah.

THE COURT: I don't.

MR. ESTES Okay, very well, your Honor. So as to counts, uh - -

THE COURT: If after I hear from Mr. Holder, I have any questions, I'm not shy, I'll ask you questions.

MR. ESTES: Very well, your Honor. Very well. Uh, and for the record, I'm confused by exactly what an interested party is as well. Um, I couldn't find anything - -

THE COURT: You don't need to argue. I've already made a finding.

MR. ESTES: Very well. Very well, your Honor.

THE COURT: Both, um - - As a matter of fact, theoretically, Frederick Seibert and Associates is listed as an interested party, yet under any definition with the way this thing is pled, they would have to be a party defendant, um, not an interested party. And it's just not the way the rules apply for interested parties so that each person listed below the versus, I'm finding they are party defendants.

MR. ESTES: Very well, your Honor.

THE COURT: Make is simple.

MR. ESTES: Um, as to counts, let's see, that's count five. As to count six and seven, plaintiff is (unintelligible) for no relief from either me or my wife, Mrs. Estes.

THE COURT: Let me get to my notes on six and seven. Hold on a minute. So I know what we're talking about here.

MR. ESTES: Sure.

THE COURT: Breach of contract and malpractice in land survey. You're not a land surveyor.

MR. ESTES: No.

THE COURT: Okay, that resolves that. Um, and the - - Although you're sued for breach of contract, there's no relief requested against you. Um, there's another very strange wording in here. Let me - - Let me, um, let's bring that up right away because it's - - Maybe somebody in their argument wants to address it. Let me see if I can find it. Okay. I just randomly pulled up the breach of contract. Okay? Paragraph 123, "These harms by the Defendant Frederick, and threatened harms by the Defendant Frederick, are irreparable in nature such that no remedy at law will afford the Plaintiff adequate relief." It seems to be in conflict with the request for damages.

MR. ESTES: And - - And there's no mention I believe of either me or my wife.

THE COURT: Well you're not in - - in that. This is all against, uh, Frederic Frederick.

MR. ESTES: That's correct. And for those reasons, counts six and seven should be dismissed.

THE COURT: And that is correctly his name, Frederic Frederick?

MR. STEELE: Yes your Honor.

THE COURT: Okay. Obviously I don't know him. I just - - Okay, all right, so you've taken care of those three.

MR. ESTES: So that's five, six, and seven. I'd like to now turn to count eight and nine. Count eight is where Mr. Holder sued both me and my wife for intentional infliction of severe emotional distress. Clearly he fails to plead with sufficient specificity, um, all of the elements required to withstand a motion to dismiss for intentional infliction of emotional distress. As Maryland courts have said, really this "tort and rewards therefrom are really reserved for the most opprobrious behavior." And I hope that I pronounced that word correctly, but I took that directly from the case which his cited as, *Kentucky Fried Chicken National Management versus Weathersby*, found at 326 Md. 663.

Um, Mr. Holder has failed to sufficiently allege all of the elements in the tort as I've argued in - - in my motion and my wife has argued in her motion. I'd like to focus if I can just on - - on two areas of those failures. Even before I say that, um, I think its important to note and I put this in my motion and my wife did as well, that the district court, um, for the District Court of Maryland back in 2010 wrote, and I quote, "In the 30 years since the Court of Appeals recognized the tort of intentional infliction of emotional distress, it has upheld such claims only four times." So in the 30 years from when it was recognized according to the District Court for the District of Maryland, the Maryland Appeals Court has only upheld a claim for intentional infliction of emotional distress four times. I don't know how many times they've upheld it since then, but this certainly is not the case where it should be upheld of granted.

Now to get to some of his failures to plead intentional infliction of emotional distress, I'm just going to focus on two parts of the elements, although he has failed to - - to properly plead really the - - all of the elements of the tort.

The first thing I'd like to talk about, your Honor, is that it requires that he prove or plead that my

actions or my wife's actions are extreme and outrageous. And extreme and outrageous by Maryland law is defined as, "extreme and outrageous conduct is such that it is so outrageous in character and so extreme in degree as to go beyond all possible bounds of decency as to be regarded as atrocious and utterly intolerable in a civilized community." Nowhere in his complaint and - - and I challenge Mr. Holder to argue in any court of law that any of the actions of me and my wife raise to such extreme and outrageous conduct that would allow him to proceed or to withstand a motion to dismiss.

THE COURT: Well he has said perjury and fraud.

MR. ESTES: Perjury and fraud. Which he can't prove, your Honor. Those are not - - All of those cases go back to - -

THE COURT: Judge Wilkinson.

MR. ESTES: Judge Wilkinson's case heard these arguments. He's heard my testimony. He's heard Mr. Holder's testimony. Mr. Holder has, himself, deposed Fred Frederick, a defendant in this matter; George Nagle who he now, um, appeared is to be a defendant in this matter, um - -

THE COURT: Who?

MR. ESTES: George Nagle? No I apologize. Not - - Not George Nagle, um, John Dowling, excuse me, your

Honor.

THE COURT: Okay.

MR. ESTES: He's a different - - George Nagle is - -

THE COURT: No, we don't - - I don't need to know.

MR. ESTES Very well.

THE COURT: That will just get be fouled up.

MR. ESTES: He's deposed John Dowling, um, and Fred Frederick, ad nauseam regarding their claims. Obviously, Judge Wilkinson found that there was no such perjury, that I did not perjure myself, Fred Frederick himself, and, um, John Dowling did not perjure himself, your Honor. So, um, and it's not sufficiently pled in - - in this pleading, your Honor, to show how these things were - - were offered as perjury. They're just wild accusations unsupported by evidence and unsupported by facts. They are bald assertions, your Honor. And certainly they should not withstand a motion to dismiss.

Additionally, your Honor, um, another element which he's failed to proper plead is - - is in order to - - to successfully plead for intentional infliction of emotional distress, the plaintiff would have to prove or have to allege sufficiently, besides just bald accusations, that, um, that he suffered some alleged severe emotional distress. And the courts of Maryland have held, and Maryland Court of Appeals has further

stated that, quote, "In developing a tort of intentional infliction of emotional distress, whatever the relationship between the parties, recovery will be meted out sparingly. Its balm reserved for those wounds that are truly severe and incapable of healing themselves." Nowhere in the plaintiff's complaint has he sufficiently alleged, other than through bald assertions, which are unsupported, that he has so suffered any such severe emotional distress. And clearly, your Honor, as can be seen, if the judge takes judicial notice, all of the filings that have cluttered the Circuit Court for Washington County, and now the Appeals Court of Maryland, that Mr. Holder are wounds are not inflicted by me or my wife, whatever hypothetical or imaginary severe emotional distress that he suffers from, but they're in fact self-inflicting and their self - - and - - and self-aggregating. He continues to file cases just like this, um, that, um, that just apparently exacerbate his own emotional distress. I ask the Court to take note of additional cases Mr. Holder has filed in the Circuit Court of Maryland here in this very court. It's case number 420. I have a copy of the complaint if you'd like. It's, um - -

THE COURT: I don't need that but 420? It's got to have a - - a number in front of that.

MR. ESTES: Sure. I've got that. It's, uh, C-21 - -

THE COURT: All right, so it's filed in 2021.

MR. ESTES: Yeah, CV-23, case 420. In this case, Mr. Holder has filed an original complaint and then a first amended complaint that is some 40 pages long written very much in the same style as this complaint and he alleges he sues, let's see - -

THE COURT: Hold on. don't - -

MR. ESTES: May 23 - -

THE COURT: Don't argue another case.

MR. ESTES: Very well.

THE COURT: We've got enough to do with this case.

MR. ESTES: Sure. Sure. But suffice it to say, your Honor, that he has littered the case, the dockets in Washington County, Appeals Court of Maryland with numerous actions until obviously whatever emotional disturbances Mr. Holder suffers from are not caused by me. It's caused by himself continuing to argue issues which already litigated.

THE COURT: I - - I understand your point. Let's move on.

MR. ESTES: Thank you, your Honor. Um, moving onto count one. Fraudulent concealment.

THE COURT: You - - You didn't do number nine. Did you - -

MR. ESTES: Oh, number nine. Let's see what number nine is.

THE COURT: Because you had said eight - - eight and nine.

MR. ESTES: Eight and nine, sure, sure. I thank you for correcting me. Count nine, "Unjust Enrichment." This is where Mr. Holder claims that somehow I've been unjustly enriched at his expense.

In order to succeed for a claim for unjust enrichment, Mr. Holder, as plaintiff, would have to sufficient to allege one a benefit that has been conferred by the defendant, uh, upon the defendant by the plaintiff, Mr. Holder.

Two, an appreciation or knowledge by the defendant, me or my wife, of that benefit.

Three, an acceptance or retention of the benefit, um, by me or my wife, under such circumstances as it, uh, as to make it inequitable for the defendant to retain the benefit without payment of its value and return of money. Nowhere in - - in the complaint has Mr. Holder alleged specifically that he has conferred a benefit of any sort upon me and my wife. Period. He doesn't own any property. He's never alleged to have owned any property. He certainly hasn't given me any property or my wife any property. Furthermore, I have not acknowledged the

receipt of any gift or - - or from - - or anything of any value from Mr. Holder, and neither has my wife. And the lastly, um, he has failed to show that even if there is some sort of transfer of something of value from Mr. Holder to me or my wife, that it would be inequitable for me to keep that property. If it's the property, my property as recorded in my plat in his own recorded plat, um, that has been transferred to me that is of value, I suggest to the Court that I paid $112,500 for that property. It's reflected in my deed. It's reflected in the survey, and it's also reflected in the plat recorded by Mr. Holder himself. Mr. Holder has provided me or my wife with no such benefit of anything of value that needs to be compensated or it would be unjust for me to keep without somehow compensating Mr. Holder. I think that deals with count nine.

THE COURT: All right now you want to go to number one?

MR. ESTES: Yeah, let's go to number one, your Honor. I apologize. So count number one is where Mr. Holder sues me for fraudulent concealment. In order to succeed or properly plead fraudulent concealment, Mr. Holder's complaint would have to sufficiently allege that I or my wife intentionally concealed a material fact that he - - that I or my wife had the duty to disclose. Second, that

we would have to have concealed it with the intent to induce Mr. Holder from, uh, from somehow, um, with the intent for him to somehow act differently. Third, um, that because of the concealment, Mr. Holder acted in a matter different from how he would have acted had he known the true facts. And four, that he somehow suffered damages as a result of that reliance.

And clearly the, uh, the complaint is devoid of any sufficiently plead facts that would support any of these elements of this tort. Number one, he has not proved or shown or alleged that there was any affirmative duty owed by me or my wife - -

THE COURT: Are you saying that calling something "Estes Evil," is not enough?

MR. ESTES: No it's not, your Honor. No and I did make a motion to strike as well, and I don't know if the Court wants to hear that.

THE COURT: No I don't want to hear that.

MR. ESTES: We can talk about that later, that's fine. Um, secondly, um, there's no evidence or - - or no claims or allegations contained in the complaint that any such concealment, even if there was concealment, was done to induce Mr. Holder to act in any other way than he normally would.

Thirdly, Mr. Holder, as shown in case 430, clearly

knows all of the facts, all of the testimony. Nothing has been concealed from Mr. Holder and he has argued the very facts which he alleges have been somehow concealed. So - - And lastly, he has acted truly in accordance with full knowledge of the supposed concealed facts in a manner consistent with which, um, he would have acted if he knew those concealed facts because the concealed facts have not been concealed, your Honor. And he's argued these things to his own detriment in numerous cases before this and other courts. I believe that is count one. Only a few more to go, your Honor. I'll try to be brief.

Count two is for tor - -

THE COURT: Too late for that. (Laughter.)

MR. ESTES: Oh well, sorry.

THE COURT: It's 10 of seven, according to that clock.

MR. ESTES: Yeah, wow I've been going for a long time.

THE COURT: That clock right back there.

DEPUTY: 10:14 your Honor.

THE COURT: No I - - He was looking back for the clock, and it was - -

MR. ESTES: I thought I've bene talking for nine hours.

THE COURT: And I just thought I'd tell Mr. Holder why he was looking back, and it didn't make any difference.

MR. ESTES: Um, count two, "Tortious Interference with Business Relationships." This is where Mr. Holder alleges somehow that I and my wife have tortiously interfered with, uh, his legal business relationships. Clearly the complaint fails to sufficiently allege any facts other than bald assertions that, um, that somehow I or my wife have interfered with his legal business relationships.

Um, the first thing I'd like to say is that, um, whatever actions my wife and I have taken, Mr. Holder would have to show that they're somehow unlawful or improper and he hasn't shown that at all, whatsoever. In fact, the Court has validated all of the actions which I have taken, which is to proceed to quite title to my property, which Judge Wilkinson, in this very court, has - - has confirmed. And that is what I have done. Um, and so, first, there are no unlawful activities that have been performed by me or by my wife.

Second, your Honor, and I apologize. Just looking through my notes. Um - -

THE COURT: Well he has - - he has indicated that you, Uncle Eddies, Deena Holder, John Dowling, Frederic

Frederick, and his business, and your wife have all, by agreement, conspired to interfere with his businesses. That's what he's pled.

MR. ESTES: But he has failed - - That is just a bald assertion unsupported by any facts. He has not delineated what business relationships have been affected. He has not delineated what actual damages he suffered. He has not sufficiently pled any sort of conspiracy or evidence of a con - - conspiracy, other than, "I," as a plaintiff, in a quiet title action, hired Mr., um, Mr. Dowling to be my expert witness and to provide truthful testimony. Moreover, um, I have not conspired, and he can't allege that I conspired with Fred Frederick, and he hasn't sufficiently pled that I have somehow conspired with Fred Frederick, um, to somehow subvert his business relationships. I have not paid Mr. Frederick, nor can it be argued, other than to set property lines on my property back in 2011, consistent with my deed, which has been upheld by this very court, and Mr. Frederick, 15, 20 years ago, I don't know when he did my plat, I didn't even own the property, performed a survey and recorded a plat in land records of Washington County some, let's see if I can fine it, 20 years ago perhaps. I don't know when the plat was recorded. I didn't even know Fred Frederick at that time, your Honor.

Um, and so certainly, I am not, and it's not considered sufficiently alleged that I have somehow conspired with these other parties to, um, intentionally disrupt Mr. Holder's properties. He hasn't pled what properties or what business interests they are, and he hasn't sufficiently pled any evidence of any conspiracy that would be improper. Moreover, an element of this crime - - of his - -

THE COURT: When did the lawsuit that was decided by Judge Wilkinson begin?

MR. ESTES: The very beginning of that lawsuit was 2020, February - -

THE COURT: That was the filing of the lawsuit?

MR. ESTES: There's been several filings, that's - -

THE COURT: But the very first filing of a lawsuit that ultimately resulted in Judge Wilkinson's decision?

MR. ESTES: I believe it was - -

THE COURT: Was it in April of 2019?

MR. ESTES: I honestly don't - - I don't remember, your Honor, when the exact first lawsuit was filed. I did file a trespass claim in district court, which hasn't been finally adjudicated, at least the trespass portion, I believe in 20 - -

MR. HOLDER: January 22, 2020.

MR. ESTES: 2020.

THE COURT: What I'm questioning is when Mr. Holder had knowledge of this issues - - of these issues, which is important for statute of limitations purposes.

MR. ESTES: That was - -

THE COURT: And it's pled by Mr. Dowling's attorney that that was in 20 - - in April of 2019.

MR. ESTES: I beli - -

THE COURT: That's what I'm trying to figure out what happened in April of 2019.

MR. ESTES: April in 2019, I believe is when Mr. Holder, his wife Deena Holder, and Uncle Eddies filed a recorded deed, Plat 10955 in the Land Records of Washington County that delineated the line between Uncle Eddies' property and my property and was signed by Mr. Holder. And I have a copy of that if you'd like, as well as, um, Mrs. Holder and Mr. Holder on behalf of Uncle Eddies Brokedown Palace. And that plat was recorded in Land Records of Washington County on, it looks like April of 2019. That's correct, your Honor.

THE COURT: Okay. All right, thank you.

MR. ESTES: Um, and just one last point, um, if I haven't emphasized it enough, as to tortious interference with business relationships, part of the tort, an element of the tort is that he has to sufficiently plead actual damages. Nowhere in that complaint has he pled actual

damages. Not one spot. Um, and for that reason - -

THE COURT: Well he stated it.

MR. ESTES: He stated it but not with enough specificity, your Honor. They're just bald accusations.

The last thing I'd like to say is that really the tort requires that we interfere with his lawful business activities. Mr. Holder, by his own admission, and by, um, his attorney, Robert Kline, in a case before this Court, admitted themselves that Uncle Eddies Brokedown Palace, the company which Mr. Holder manages, it's a New Mexico Limited Liability Company, formed in 2018 and 2019, had never until June 2020, filed to do business in the State of Maryland. They were renting the property at issue. Um, and moreover, Justin Holder, as a member, I believe he signed somewhere in his alleged, um, verified complaint in case 430, the quiet title, um, action, that he was a member of Uncle Eddies. However, both Mr. Holder and Mr. Kline on behalf of Uncle Eddies, both (unintelligible) that Justin Holder, up until June 2020 had never been a member of Uncle Eddies Brokedown Palace, nor did - -

THE COURT: Those aren't facts that are in front of me, are they?

MR. ESTES: Not yet, your Honor.

THE COURT: No.

MR. ESTES: That's correct.

THE COURT: So I can't really consider them in the motion today.

MR. ESTES: That's correct.

THE COURT: Uh, the only way I can consider the facts, uh, today, um, is if I can take judicial notice such as the case with Judge Wilkinson. Uh, or if there's been affidavits filed.

MR. ESTES: There is a case where this very testimony was taken and its case 420 and I've got - - I'm sorry, um, case 316, Jeffrey Young versus Justin Holder, held in the Circuit Court for Washington County, where both Mr. Holder and Mr. Kline did so testify. And I understand that - - that perhaps these facts aren't in front of you, but I would ask if you'd take judicial notice of these companion cases, but moreover, and probably even more importantly, nowhere in this complaint does Mr. Holder allege, nor can he allege that Mr. Holder was acting in a lawful manner, um, during this time. And that, I believe is perhaps one of his business relationships that I have interfered with. He hasn't delineated what business relationships that I or my wife have interfered with, nor is he (unintelligible) that they were legal, now can he argue that they those relationships will legal. Um, that is count - -

THE COURT: Well he seemed to lay out some, uh, governmental things in his addendum causes.

MR. ESTES: I'm not sure - - I do believe - -

THE COURT: I'm not sure what - -

MR. ESTES: - - he argued that perhaps that I have somehow interfered with his - -

THE COURT: Town of Keedysville, Washington County Department of Water Quality, Washington County Surveyor's Office, and the Maryland Department of Natural Resources.

MR. ESTES: Well.

THE COURT: He doesn't list them in - - in his pleading, but he - - it's as part of - - Well he's asked for an injunction, which, um - - but that you be enjoined from interfering with his business relationships with Uncle Eddies, with Deena Holder, his wife, the Town of Keedysville, and the other businesses.

MR. ESTES: Point me to that page - -

THE COURT: He's asked for that relief, but he's not plead what you've done.

MR. ESTES: Exactly.

THE COURT: Okay.

MR. ESTES: And he also alleges, I believe, that I have somehow interfered with is ability to argue a title insurance policy, which is wife and Uncle Eddies - -

THE COURT: Wait a minute, hold it. Is that in this

case? Because I don't recall that.

MR. ESTES: Yeah it's in there someplace, your Honor. I don't - - Let me see if I can find the page. Mr. Holder, you can probably point me to the correct page.

THE COURT: Did you allege that in this?

MR. HOLDER: I list Erie Insurance, which is property and casualty, your Honor. It's separate from the title insurance. This would just be a fact outside the record, probably something for summary judgment later, but I don't believe it would be appropriate for a motion to dismiss here.

THE COURT: Okay.

MR. ESTES: He did plead it though, your Honor.

THE COURT: All right, but - -

MR. ESTES: Um - -

THE COURT: - - they're not something you need to argue.

MR. ESTES: Okay, very well. Um, I think I'm down to two last counts, your Honor.

THE COURT: That's correct.

MR. ESTES: Uh, count three, um, this is where Mr. Holder asked for a declaratory judgment and injunction, or excuse me, a declaratory judgment against me and my wife. Um, in order to issue a declaratory judgment, Mr.

Plain - - the Plaintiff, Mr. Holder, would have to sufficiently allege that, one, that an actual controversy exists between the contending parties; two, that antagonistic claims were present between the parties involved which indicate imminent and inevitable litigation; three, that the party asserts a legal relation status, right, or privilege that is challenged or denied by the adverse party; and then really I think there's probably an element in there, um, that, um, that requires the interest of the public, and I may be, um, getting confused there. But - - But nowhere in his complaint does he sufficiently allege any of these elements. There is no actual controversy that exists between the contending parties. The - - All of the issues as to title and property have been decided and litigated in case 430, the quiet title case.

THE COURT: And on appeal.

MR. ESTES: Yep. That's right. Moreover, um - -

THE COURT: I mean your actual argument is there's a controversy that was decided, it's on appeal, and it's not in this case, it's in that case.

MR. ESTES: That's right. And - - And really that there are no novel issues of - - of, um, of any actual controversy - -

THE COURT: Right.

MR. ESTES: - - in this case.

THE COURT: So that you're claiming that this is barred by collateral estoppel.

MR. ESTES: That's right.

THE COURT: Okay.

MR. ESTES: And - -

THE COURT: What's your next?

MR. ESTES: The last thing I'd like to say here, your Honor - -

THE COURT: You still got one more count.

MR. ESTES: I do. You would like me to move on, I take it, your Honor. Very well. Injunctive relief, your Honor. My final statements, um, for injunctive relief to be, um, to be had, Mr. Holder, the plaintiff, would have to allege sufficiently that, you know, he has a right to relief on the merits or the likelihood of right to relief on the merits. It's our argue that he does not and has not sufficiently pled, that the balance of the convenience favors the plaintiff, which I would argue he has nowhere in his complaint any way, shape or form, argued that the balance of convenience favors Mr. Holder, um, nor has he argued that he will suffer some sort of irreparable injury if the injunction is not granted. And here's where the public interest comes in – that somehow the public interest would be involved. He's asked for

injunction, and I know it's not before the Court, in other cases and in fact currently before, as a - - as a matter of - - of novel discussion in the Court of Special Appeals in the State of Maryland, he's asked for an injunction there. But really nowhere here has he indicated that the public peace is somehow would be preserved by the issuance of an injunction, nor has he argued that he will suffer irreparable injury, or that he has any rights to relief on the merits of this case. And with that, I apologize for the length of my - - of my presentation. I'll rest with that.

THE COURT: All right thank you.

MR. ESTES: Thank you, your Honor.

THE COURT: Um, I'm going to let you decide. Would you prefer to answer his and then we move on? Or would you prefer to go ahead and move on, then you answer all three?

MR. HOLDER: I - - I would prefer the latter, your Honor.

THE COURT: All right, we'll take the plaintiff's arguments or the defendant's arguments, and then you'll argue all - - against all.

MR. HOLDER: That's correct.

THE COURT: All right. Now when – when you start that, I'll make sure you and I have an understanding on

who you're doing that. Okay?

MR. HOLDER: Okay.

THE COURT: All right. Thank you. Counsel.

MR. STEELE: Good morning, your Honor. James Steele on behalf of the Defendants, Frederic Mark Frederick and Frederick, Seibert and Associates.

Um, uh, before I get to the main part of my, uh, argument, first of all, there's an awful lot of overlap between some of my legal arguments and Mr. Estes', so I'm not going to retread ground there. Um, I will point out that the, uh, to your Honor's question - -

THE COURT: Other than you ought to just state it, you know what I mean, just so the record is clear.

MR. STEELE: Right, so the record - - Right. Right. So, um, your Honor's question about, uh, that pertains possibly to statute of limitations, we addressed that in our motion, that it's, uh, the April 2019 date is important because that's when Mr. Holder on behalf of his company, Uncle Eddies, and Mrs. Holder, reconfigured their properties and filed Plat 10955 to record that. And Mr. Holder signed it as manager of Uncle Eddies. So, um, so as of - - And Judge Wilkinson noted that in his rule in case 430. So as of April of 2019 - -

THE COURT: He's on notice.

MR. STEELE: - - he's on notice and he didn't file

this case until January of 2023, so that would be outside the statute.

Um, the first argument, uh, as your Honor correctly noted, the - - the paragraph 123 in the complaint, that basically said there are no legal remedies for this count - -

THE COURT: That paragraph is actually repeated in a number of counts, so - -

MR. STEELE: I was going to address that, your Honor.

THE COURT: All right.

MR. STEELE: Counts one, two, and six through nine, all of them have the same language, so that's paragraphs 88, 93, 123, as your Honor noted, 131, 140 and 148, all of those.

THE COURT: Have you ever seen that kind of language before?

MR. STEELE: I have not, your Honor.

THE COURT: I hadn't either. Okay.

MR. STEELE: Um, which leads to the first point that we had, um, the Frederick parties had in their motion, which is an overall point that Mr. Holder failed to comply with pleading standards and part of that, uh, you know, no clear concise statement of facts that show, uh, a prima facie case for any of the causes of action, any damages, any causation. There's just a - - a recitation

of the similar grievances to case 430, about what it all boils down to is he doesn't like this, uh, where the property line has been drawn by the - - by the plat 10955, various deeds over the years.

THE COURT: And just so the record is clear, Judge Wilkinson found that that plat was correct.

MR. STEELE: That's correct, your Honor.

THE COURT: All right.

MR. STEELE: And that's - - And that's a final judgment.

THE COURT: Right.

MR. STEELE: So that's the - - the point of the appeal in 430. Um, so these vague allegations that don't really set forth - - I mean there - - as - - you now, there's allegations of conspiracy and perjury and all that, but there are no factual allegations that here's why it's a conspiracy, here's why it was perjury. So on the basis of violation the pleading standards alone, this case can be dismissed.

Um, the collateral estoppel argument, uh, the only thing I would add to what Mr. Estes said is, um, it's just to specify that Mr. Holder was the defendant in the previous case. He litigated these various issues and he lost. Um, and as Mr. Estes said, uh, that issue is on appeal. It's a - - It's a final judgment that is on

appeal

THE COURT: Right.

MR. STEELE: Again if - - if the Court finds that that's the only reason to dismiss this case, then we would suggest that ruling be held in abeyance until that, uh, or the case be stayed - -

THE COURT: If what's the only reason?

MR. STEELE: If - - If - -

THE COURT: Collateral estoppel.

MR. STEELE: If collateral estoppel is the only reason the Court, and we believe there are several other reasons, but should the Court decide that collateral estoppel is the only reason, we would suggest staying this case and/or holding that part of the motion in abeyance until the appeal is decided and then take action accordingly.

Um, another, uh, fact that goes throughout several of the counts, if not all of them, is that Mr. Holder lacks standing in this case. That the property in dispute is owned by Uncle Eddies, uh, which is, as the Court noted, is actually a defendant in this case, um, but even as the owner of Uncle Eddies, he would not have standing to bring these causes of action against my clients.

THE COURT: It would have to be Uncle Eddies.

MR. STEELE: Correct. He doesn't allege that he's

the owner. He does allege that - - that Uncle Eddies - - that Uncle Eddies owns the property. That's the complaint at page seven.

THE COURT: All right.

MR. STEELE: Paragraph seven. Um, so, uh, even assuming that his arguments would have merit otherwise, which we dispute, uh, he doesn't have standing to bring any of them. So for that reason alone, he should be, uh, the Court should grant out motion, which again is a motion to dismiss or for summary judgment. If your Honor, uh, takes into consideration the exhibits, um, to our motion, then the Court the rule this as a matter of summary judgment.

Um, we have already addressed the argument about, uh, the statute of limitations.

And then I would only say, um, just I'm going to briefly run through because it's in the motion, it's in our motion, but these vague allegations that don't support any of these causes, that's the basis for our argument, that he failed to state a claim as to every single count in this, uh, in this matter.

What it all boils down to, your Honor, is the allegations appear to be, um, that - - and Mr. Holder would prefer that there had to have been some sort of deed overlap, which there isn't, and that's - - that was

an issue in 430, that's you know the - - the facts are that the boundary of the property is the westside of, uh, Little Antietam Creek. Um, so on count one, he doesn't allege that he's the owner of the property. He doesn't allege, uh - - Presumably what he's alleging is because people aren't saying there is a deed overlap, that somehow they're fraudulently concealing that from him.

Um, the tortious count two - -

THE COURT: You're saying the pleading "Fred's Fraud," is not enough?

MR. STEELE: That's correct, I'm saying that there has to be, um - - And also, your Honor, you know, pleaded not just vague pleadings, but pleading fraud with particularity, which he has not done.

Tortious interference with business relations. Again, uh, he's not the owner of the property. He doesn't allege any facts to establish that the Frederick parties acted intentionally or independently wrongful or unlawfully. Um, and he doesn't allege facts to show specific causation of any actual damages that - - that he incurred. Again, even if he could have done that, it would have been that Uncle Eddies incurred them not, uh, what Mr. Holder incurred.

Count three does not appeal - - That's the declaratory judgment. He doesn't appear to allege

anything or even bring that against, uh, Frederick, and also count four, injunctive relief.

Loss of consortium, I believe the - - the Court has already addressed that, but I would, to the extent you haven't, I would reiterate Mr. Estes' argument.

THE COURT: And has a fatal flaw as loss of consortium.

MR. STEELE: Right. And in count six, the breach of contract, um, again, Uncle Eddies had the contract with, uh, my client, not, uh, not Mr. Holder himself. Um, and there's, uh, the alleged breach would - - is presumably because Mr - - my clients didn't support his argument that there was a deed - - deed overlap or that the boundary went through the middle of the creek instead of the westside.

Um, malpractice in land surveying. Again, he wasn't the client, um, and there's no allegation of facts to support and no - - certainly no expert testimony to support, um, malpractice in surveying. Um, and again it all appears to be that Mr. Holder had hoped that my clients would support his theory that the boundary went through the middle of the creek instead of where it actually, factually and legally does, which is the westside of the creek.

Um, six, similar arguments to Mr. Estes on the

intentional infliction of severe emotional distress. There's no allegations that the Frederick parties acted with knowledge that any actions would cause distress. Um, there's no, uh - - I'm going from memory now, but I believe some of his support is that when he told people about this, they said, "outrageous," and I don't think that rises to the level of, uh, supportive cause of action for intentional infliction of emotional distress under Maryland law.

Um, unjust enrichment. Again, he - -

THE COURT: If it did, there would be many people being sued for it.

MR. STEELE: That's exactly right, your Honor. Um, and then count nine, unjust enrichment. Similar arguments to Mr. Estes'. No allegations. No factual allegations of any benefit conferred by Mr. Holder on the Frederick parties. Again, his contract, uh, Uncle Eddies had the contract with, um, my clients, not Mr. Holder personally. And I don't think, uh, you know, payments made pursuant to a contract, um, for services rendered which were rendered here, uh, is unjust enrichment, especially where there is judicial determination that what my clients did is - - was accurate and is in fact, you know, the - - the whole issue decided in 430 about the western boundary of - - of the property being the

western boundary of the creek.

So, your Honor, um, with that I would just say between what I've said now in court and what's in the papers, that we would ask the Court to grant, for all of the reasons stated, that the motion and here today, grant the motion to dismiss, uh, or in the alternative, grant the motion for summary judgment. Thank you.

THE COURT: All right, Mr. Holder.

MR. HOLDER: Yes, your Honor.

THE COURT: Um, let's - - As you argue, I need you to be specific as to who it is, which defendant you're addressing, and to help you with that, we're going to start with Defendant Dowling. Now he - - His attorney is not there to make an argument, but I've read the pleadings, and either I'll rule based - - after I hear from you, or I'll hold this until a later argument when his attorney can be here. But, um, in addition to a number of similar arguments made, um, by the other defendants, they also say you don't make a claim against him.

MR. HOLDER: Well I would - -

THE COURT: I - - I couldn't find a claim. Can you point me to a claim you've made against him?

MR. HOLDER: Um, your Honor, I like Mr. Dowling. I mean - -

THE COURT: No, no, it's not - - I'm - - I'm interested. I want to know, have you, in your pleading, made a claim against him?

MR. HOLDER: As - - I've made the claim as *respondeat superior*, Mr. Estes, as his agent, so Mr. Estes is the one that the claim is damages. Mr. Dowling is a defendant who would be jointly and severally liable as I've said in my motion under *respondeat superior* as agent of Estes.

THE COURT: Respon - - No it's not - - Your respondeat superior may have an agency component to it, but that is an employment. Um, the Estes hired him as an expert witness, I'm - - as I understand what's been said. He was not a, uh, surveyor who was hired to survey the property. He was hired to - - for the purposes of trial. Correct?

MR. HOLDER: Um, the complaint - -

THE COURT: So what - - what - - which count is it that you're claiming against him so I can go take a look at that.

MR. HOLDER: Well technically it would be a very easy amendment to add his name in the addendum clause.

THE COURT: We - - We can't do that. We - - We're here today.

MR. HOLDER: Okay.

THE COURT: Which count are you claiming you've pled against him?

MR. HOLDER: Well in the - - in the fraudulent conspiracy, the deceit, the - -

THE COURT: Well hold on. Let's - - Let's - - Let me find it. I should have written the page numbers down here. So you're saying count one.

MR. HOLDER: Count one.

THE COURT: Fraudulent concealment, right? Hold on one second. (Pause for approximately 30 seconds.) Nope.

MR. HOLDER: It says, "Defendants," [comma], so they're all defendants. "Defendants," [coma].

THE COURT: That's - - that's not the way it works. "Defendants Frederick, Benjamin and Lisa Estes."

MR. HOLDER: I apologize if my pleadings aren't as artfully drafted as those of an attorney. I'm a pro se litigator, your Honor.

THE COURT: I - - I understand. I understand, but that's what it says. You've sued, um, Mr. Frederick and the Estes in count one. All right. Let's take a look at count two.

MR. HOLDER: Your Honor, I can just stand on my paper on that. I don't need to argue it.

THE COURT: Okay. Well give me a moment because I'm - - I'm on the hunt right now and I want to see whether

I'm - - I didn't see it.

MR. HOLDER: Well you're not going to find Mr. Dowling's name in any of the addendum - - addendum clauses, your Honor.

THE COURT: Or in the - - any of the counts. I know he's in the long preliminary that you wrote.

MR. HOLDER: He's in the operative set of facts - -

THE COURT: Right.

MR. HOLDER: - - that - - that contain the claims that he's interested in.

THE COURT: But - - But yeah - - But there's no actual - - All right that's fine. You've answered my question. I thank you for that.

MR. HOLDER: Okay.

THE COURT: All right so, um, I'm just going to let you argue. Go ahead.

MR. HOLDER: Okay, I'm - - I'm just going to start off, and like I said, I'm apologizing that my pleadings aren't as artfully drafted.

THE COURT: No need to apologize.

MR. HOLDER: Um, I did note one set of facts outside the record that wasn't in by an affidavit, that's this contract with Uncle Eddies and not myself that Mr. Steele entered. And I would just object to the entry of that contract. That would be something that hasn't been

brought through affidavit. It's not in the pleadings. I don't think you can make that inference from the complaint. It's not in the face of the complaint. Uh, specifically, my - - my pleadings were that Fred owed the duty to me, um, let's see, I'm going to just address the issue of standing first, if that's - -

THE COURT: Yeah because, uh - -

MR. HOLDER: Let's address that.

THE COURT: Because everyone's alleged that you don't own the property.

MR. HOLDER: Okay. So - -

THE COURT: Do ya?

MR. HOLDER: I do now. De facto merger as has been ordered by the Court or subsequent consolidation of all the parties. I'm successor in interest of two or three predecessors, uh, of the same property. That's been decided in case 371. You can take judicial notice of an alter ego. I don't concede that. That issue is on appeal, however, that's what we have in the record today is there's been a de facto merger and subsequent consolidation of Uncle Eddies Brokedown Palace and myself.

THE COURT: When you filed suit, was - - what was the - - Who owned the property?

MR. HOLDER: According to the order in case 371, uh,

there was a de facto merger and - -

THE COURT: When was that order?

MR. HOLDER: That order was September 9th of 2022.

THE COURT: De facto merger, I'm not sure what that means.

MR. HOLDER: Or - - Or merger de jure maybe. I have plenty of case law on it.

THE COURT: I'm not sure what it means. Tell me what it - - what it means.

MR. HOLDER: Well you would look maybe to the corporation's article, um, that - - let me try to find you a Corporations Article here that would - - would help assist you with that, your Honor. I apologize for jumping all over but I want to answer your question.

THE COURT: No, no, nope. Nope.

MR. HOLDER: Um, so Corporations Article, Section 3-114, 2021 at (e)(1), "The assets of each corporation, partnership, limited partnership, limited liability company, and business trust party to the articles, including any legacies which it would have been capable of taking, transfer to, or invest in, and they are going to devolve on the successor in interest without any further act or deed." It just happens automatically when you have a de factor merger, de jure merger. Court ordered it. He said, "alter ego," that is a merger.

There is two predecessors that now become one. I have all the claims and title to Uncle Eddies as mine, as well as the liabilities. Uncle Eddies is current on all of their obligations that weren't in default, yet they're still here as an interested party or defendant to the extent that there is some dissenting shareholder that would have an interest in this case or that could get overturned on appeal. And - -

THE COURT: Were there shares issued in this?

MR. HOLDER: There weren't. It was a closed corporation, your Honor.

THE COURT: That's what I thought. Well I thought it was an LLC.

MR. HOLDER: Correct, LLC. I believe that's the same as closed corporation.

THE COURT: Well, um, do you agree with this that there was a court order with a merger? Or you don't know about it?

MR. STEELE: I don't know about it, and it wasn't alleged in the complaint.

THE COURT: Right.

MR. STEELE: He - - He alleged in the - - Uh, he alleged in the complaint that, uh, that Uncle Eddies was the owner of the property.

THE COURT: Yeah.

MR. STEELE: Did not allege that he was.
THE COURT: I know, you did.
MR. HOLDER: Well I - - I didn't allege Uncle - - I said Uncle Eddies owned property near here. I didn't specifically allege that, and I said, "the plaintiff," the plaintiff was damaged. The plaintiff had the contract.
THE COURT: Did you allege that you own the property?
MR. HOLDER: No and I alleged the contract was with me. I alleged the contract - - the - -
THE COURT: Okay.
MR. HOLDER: - - the duty to me.
THE COURT: Hold on. Hold on. Tell me where that is and, um - -
MR. HOLDER: Sure.
THE COURT: - - tell me where you've alleged who owns that property? And the reason why I'm doing that is just because it's - - the pleading is so long it would take forever to - -
MR. HOLDER: Sure. Um, I didn't actually allege who owns the property in the complaint. I said, "Uncle Eddies owns property near there." And even to that ex - -
THE COURT: Yeah but where do you say that?
MR. HOLDER: Uh, paragraph seven I believe. He

picked that up.

THE COURT: All right, hold on, hold on.

MR. HOLDER: Okay.

THE COURT: If you need, go ahead and write your next thought down so that if I'm going a little bit slow, I want you to be able to pick up where you were.

MR. HOLDER: I have, uh - -

THE COURT: "Uncle Eddies Brokedown Palace, LLC, which owns real property in Washington County, Maryland whose rights and interest could be effected." Okay.

MR. HOLDER: And I have –

THE COURT: "Deena Holder owns real property that could be effected." Um, but it doesn't say how. Okay?

MR. HOLDER: Well and, your Honor, I really have to - -

THE COURT: Do you allege that you own this property?

MR. HOLDER: I allege according to the 371 complaint and order there, I - -

THE COURT: Show me.

MR. HOLDER: - - that would be a de facto merger.

THE COURT: Show me where that is.

MR. HOLDER: Oh, in the complaint?

THE COURT: Yeah, that's what I'm looking for.

MR. HOLDER: Oh no, it's - - it's not in the complaint.

THE COURT: Okay. All right, go ahead.

MR. HOLDER: So paragraph 17, Mr. Holder relied on Frederick because this - - that is what Frederick represented to the plaintiff when performing his duty thereto (unintelligible) at paragraph 24, "Frederick performed engineering work for plaintiff and owed a duty to plaintiff to disclose the material fact of the deed overlap at the northern title line deviation, aka, the swamp." That's at - - That's at number 80. And, um, April 6, 2018, Frederick signed a survey certificate on a boundary survey he performed as agent of Justin Holder and owed him a duty thereto, representing to Justin Holder that title lines on the survey were the say title lines as described on a deed recorded at Liber 408, folio 137, among the Land Records of Washington County. The Hutzell deed. Said survey incorporated herein by reference.

THE COURT: And these are the same things that have been decided by Judge Wilkinson?

MR. HOLDER: Uh, that's - - that's not true, your Honor, and - -

THE COURT: What did he not decide?

MR. HOLDER: Well, I believe that the collateral estoppel is our threshold issue, and I was going to get to that last but if you want to get to it now, we - - we

can.

THE COURT: Well there's two. The real threshold issue is statute of limitations. That's the biggie.

MR. HOLDER: I addressed that, um - - That's - - You want - - want to go to that one then?

THE COURT: Well I'll do however you want to argue it, but - -

MR. HOLDER: I'm just trying to please the Court here, your Honor.

THE COURT: Don't please me. You do it the way you think you need to.

MR. HOLDER: All right, so we'll go to statute of limitations. Let's save what - - what I believe - - what I think is the threshold issue for last. Okay?

Since the statute of limitations clearly - - I had a confidential relationship with Mr. Frederick. Okay? I - - I had no reason - - I know everybody is charged with a duty of these land records. I understand that. But I had no reason to do it because I had Mr. Frederick looking for me. He told me. He gave me the title lines that are on the deed that I was purchasing. But that's what the whole particularity at the beginning, all those facts, number one through 78, they spell it out. This isn't about whether or not by law it's in the creek or on land. There was a title line deviation up at the top

that Mr. Dowling identified. Mr. Frederick failed to disclose. He told me the lines were the same as whatever Mr. Estes had. That's not the property that I was purchasing. And had I known that, I would have been on notice to go quiet title, to go get a second opinion, to go pull the deeds. What Mr. Frederick didn't tell me, and I'll show you here right on the complaint at number 18. Can I give the Court a copy of this?

THE COURT: No.

MR. HOLDER: Okay.

THE COURT: That's in your pleading.

MR. HOLDER: It's a - -

THE COURT: Okay. I've seen it.

MR. HOLDER: So right at number 18, so the black line is the deed that we bought. The blue line is the deed that I signed and Mr. Frederick's exhibit to his motion, it confirmed this moved right into the collateral estoppel that what was decided - - See what was decided in the 430 Order was that because I signed Plat 10955, because I was defrauded, I changed the property line and such a powerful instrument of estoppel, that plat, that I couldn't go back on my word to what I represented to the world. And the only reason I did that is because Mr. Fredrick failed to disclose the fact that he didn't draw the title lines. He went to a blazed tree and a fence

line that he admitted, exhibit one to my opposition to Frederick, he admitted he invented. Now he represented to this Court in 430, as a matter of the record, that he only used public records in his survey work. That is in fact untrue. Mr. Frederick invented a fence, he invented a blazed tree, he departed from the stone in the course of distances, and he did not disclose this gap to me. Had I known about this gap, I would have done more than buy parcel 414 from Bryan Smith. Mr. Frederick represented to me, as he testified, as is in this record, through my motion for summary judgment, and in my pleadings, that "Hey I told you as you go beyond Estes, you don't own to the creek." "You need to go buy this parcel 414 from Bryan Smith," so I did that. I did exactly what Mr. Frederick said. So I thought we owned to the creek. All those lines were in the floodplain. I'm not a surveyor. Now I know because I got - - I got hosed. So I get hosed by Frederick and now like Estes says, I have 10 district court complaints, peace orders, three unsuccessful trespassing charges, four unsuccessful peace orders filed against me, four unsuccessful nation - - natural resource charges. All in the district court and all damages, all those - - all of those legal fees, St. Luke's Church, uh, the case I cited in Frederick's, I'm entitled to third party litigation fees because he

forced me to go up here on this hill, looking for property markers to - - to prove the title lines that he deviated from. This is - - This is how big this fraud - - It's not just in the 430 case he's in.

THE COURT: But you haven't pled a lot of this. You just haven't.

MR. HOLDER: Well like I said - - Okay.

THE COURT: You alluded to things, but you didn't plead it.

MR. HOLDER: I feel like there's enough there, however "to preclude on a first motion to dismiss, a dismissal with prejudice, that the Court regard the allegations as merely conclusory and insufficient, it should have permitted the appellants to amend their complaint if they property can to pro - -

THE COURT: I - - I'm - - I know the law.

MR. HOLDER: Okay.

THE COURT: I know the law, when it comes to the pleadings with that. What you're arguing is that, by arguing that, is that if I'm going to dismiss this, to dismiss it without prejudice rather than with prejudice.

MR. HOLDER: Yes your Honor.

THE COURT: Right.

MR. HOLDER: That I - - I can amend this pleading - -

THE COURT: I just want to make sure you understood

what you're arguing.

MR. HOLDER: And please understand I did get a motion to strike because the pleadings were too long. I know I have to plead from particularity.

THE COURT: No, it wasn't for too long.

MR. HOLDER: Particularity.

THE COURT: It wasn't for too long it was for some of the things you said in them.

MR. HOLDER: Well everything I said in paragraphs one through 78 have been - -

THE COURT: I don't know that you want to repeat it.

MR. HOLDER: Well I would repeat it as true because I know it's true because I have testimony under oath that proves its true and that's what I plead.

THE COURT: It isn't the facts, it's that I'm referring to. You heard what I said about each of the - - the way you referred to things.

MR. HOLDER: Correct.

THE COURT: Which was inappropriate, extremely so.

MR. HOLDER: Uh, if you - - if you say so, I'll take your word for it.

THE COURT: And you - - No, you know it. You know it.

MR. HOLDER: Your Honor, I thought I was pointing it out with particularity.

THE COURT: "Estes Evil?"

MR. HOLDER: Absolutely.

THE COURT: No. No. That's not an appropriate pleading. That's not appropriate to put in a pleading. It's not a fact. It is your conclusion. It's not anything upon which the Court can act.

MR. HOLDER: Well it's pleading malice generally.

THE COURT: A court can only rule - - Malice? Obviously if you pled malice, that's one thing, but "Estes Evil," is slanderous.

MR. HOLDER: Well isn't malice - -

THE COURT: Or I guess it's libel since you put it in writing.

MR. HOLDER: Isn't - - Isn't malice evil? Isn't that what it is? The evil intention of someone is actual malice?

THE COURT: Evil is a moral judgment, not a legal judgment.

MR. HOLDER: For a jury, I understand.

THE COURT: No, not for a jury. It's a moral judgment. It's for your priest or your rabbi or your minister.

MR. HOLDER: I guess I'm confused, and I apologize for that because I believe that one form - - Another form of malice would be just reckless disregard for the truth.

THE COURT: Right.

MR. HOLDER: I mean I understand different types of malice.

THE COURT: That's one way of putting it, but it's not - - Never mind, go ahead. I mean, you - - you've done this in more than one time during the course of this pleading, which made it difficult to read.

MR. HOLDER: I will take that under advisement, your Honor. I certainly want to bring good pleadings before the Court, so I appreciate your advice on that.

So to address the issue of - - of standing in that I guess you saw the case law and I - - I put in Frederick's opposition of standing, um, that, let's see - -

THE COURT: Do you have a copy of the order that you say is a, um, a merger?

MR. HOLDER: That is, uh, I - - I have a copy on my computer. I don't have a copy printed out. It would be the September 9th. Um, that's a final order.

THE COURT: Show it to counsel.

MR. HOLDER: Okay, hold on. Let's see. Let's go to - -

MR. ESTES: If I may, your Honor, I may have a copy of the September 9th - -

THE COURT: If you do - - Anything would help.

MR. ESTES: If it's the 430 case in which you refer.

MR. HOLDER: Uh, no, it's going to be the 371 case. So this is the order right here. This is a 29-page order - very, very long and it is under appeal, but we basically just - -

MR. STEELE: Where does it start?

MR. HOLDER: Just - - I guess right here.

MR. STEELE: Well it's safe to start of the sentences. This (inaudible) - - "Any suggestion that Mr. Holder was acting wholly for his own personal benefit in 2020 is not believable." This is - - Is - - Uh, your Honor, I'm not sure I should be addressing questions to other parties, but I'm not clear in 371 if Mr. Holder is a defendant or a plaintiff.

MR. HOLDER: I am a defendant.

THE COURT: Okay.

MR. STEELE: Okay. The - - This paragraph, and this is an order, a final order in 371, that the sentence that he is - - that Mr. Holder has directed me to says, "This statement - - It starts on page 27 of the order. "This statement clearly refers to Mr. Holder's trespass into Plaintiff's Parcel 3 in May 2020. Given that Mr. Holder admits he entered Parcel 3 at Deena Holder's request and given that the Holders use Uncle Eddie's as an alter-ego (see footnote 1), any suggestion that Mr. Holder was acting only (the Court emphasized the word "only") for

his own personal benefit in 2020 is not believable. A permanent injunction will be entered against all Defendants." I mean I haven't see the entire Order, your Honor, but, um, but the way I'm reading that, it's saying, uh, it's saying that it wasn't believable that Mr. Holder was using that property for his own personal use. So that really supports out, uh, our argument. And on top of - -

THE COURT: That's the way I heard it.

MR. STEELE: And on top of which it's not pleaded in the complaint.

MR. HOLDER: There's additional collateral order, or I'm sorry, interlocutory orders in case 430, but they're not final.

THE COURT: But the case is over, right?

MR. HOLDER: It's not, uh - -

THE COURT: If there - - Then the final order is all that matters.

MR. HOLDER: Well the case isn't over.

THE COURT: You said it was.

MR. HOLDER: I'm sorry, the 371 case is over, yes, correct. I'm sorry. I'm sorry. We were talking about 371. I went to 430.

THE COURT: Okay, I'm sorry. All right, go ahead.

MR. HOLDER: So, part of the - - part of I think the

confusion is that when I pled this complaint, there was no final orders in 430. Okay? I didn't have any final orders. Then I - - I moved to consolidate these operative facts after Mr. Estes concedes there are operative facts that are the same. So I make a move to consolidate these claims, operative facts, that can potentially be litigated as *res judicata* against me and Mr. Estes. They weren't litigated. None of this was litigated in 430. And I'm going to get to this threshold issue of collateral estoppel and I'm going to prove to you beyond any inference that it was not litigated in 430. I can do that with the order, with the four corners of Judge Wilkinson's Order. I believe Judge Wilkinson said what he meant, and he meant what he said in the Order. His final order, he said, "Particularly, the Court is tasked with deciding between two options for the location of the property line: (a) the line is indicated in Plat 9186 and 10955, or (b) a line drawn down the middle of the creek. For all the reasons noted above, the court finds, as a matter of law, that the boundary line between the Plaintiff's land and Uncle Eddie's land is as indicated on Plat 10955." Okay? Now if you go to the fac - -

THE COURT: Which is down the middle of the creek or on the back on the side? Which one?

MR. HOLDER: It's - - It's, uh, the blue line. In the - - In the complaint at number 18, it's the blue line, the line that followed the fence that Mr. Frederick invented, the blazed tree that Mr. Frederick invented. It's not the black line. The black line was never an option. The black line was never before the Court because Plat 10955 was such a powerful instrument of estoppel and (unintelligible) that we did not have the ability to litigate these lines in that case. We were fully estopped in that case because of the fraud.

THE COURT: You've not pled that - - You're arguing things that are not part of your lawsuit here. Do you understand that?

MR. HOLDER: And that - - That's what I was getting at is I need to be able to amend the final order in, in order to address this collateral threshold issue because I was denied that - - I was contravened from that opportunity. The - - The Court came in and on the sole - -

THE COURT: You're using words I don't think you know what they mean.

MR. HOLDER: I think I was - - I think that the Court saw the complaint, issued a final order and then banned stayed my case. I couldn't do anything about it and now I'm stuck. I could have amended this complaint the

minute I saw that order come out and I was starting to work on it, but I got - - out of abeyance of the Court, you stayed all the proceedings.

THE COURT: Hold on one second. When did the order come out?

MR. HOLDER: The final order was March 24th, on a Friday.

THE COURT: March 24th?

MR. HOLDER: March 24th was when it was certified final.

THE COURT: Okay.

MR. ESTES: I do have a copy of the Opinion and Order from that case if you need it, your Honor.

THE COURT: I - - I may want to take a look at that, but I'll wait. Right now, we're in his - - we're in his, uh, argument.

MR. HOLDER: It was exhibit one, I think, to Mr. Frederick's, um, motion.

MR. STEELE: May I clarify the dates, your Honor?

THE COURT: Yeah. Um, the order at issue was September, uh, dated September - - well 19th, I think it was entered on the 20th, uh, so September 19th or 20th, 2022 and that order was made a final order on March 23rd of 2023. That's in our - - I'm sorry, uh - -

THE COURT: All right, you're going to have to

explain that one to me. How does an order dated September not get made a final until March?

MR. STEELE: Your Honor, I'm not - - I wasn't in that case so - -

MR. HOLDER: I can - - I can explain it.

THE COURT: Okay. Why don't you take a shot at it?

MR. HOLDER: We had - - We had an order. It was on a boundary. Uh - -

THE COURT: An order precipitated September.

MR. HOLDER: It was very simple. It was a very simple order. It said, "Adverse possession was not the subject of the order."

THE COURT: Right.

MR. HOLDER: It's just an order that I, as the Court, I was particularly tasked, at this motion for summary judgment, with two options. It's very - - very - - That's in, um, that's in the final order and opinion and he was specifically tasked with these two options – either the Frederick line - -

THE COURT: You're not - - You're not explaining it.

MR. HOLDER: Okay.

THE COURT: Somebody should show me the order.

MR. ESTES: If I may approach?

THE COURT: Just hand it to the clerk. That's okay.

MR. ESTES: I've - - I've already shown it to Mr.

Holder.

THE COURT: Thank you.

MR. ESTES: That's the September - - docketed on September 20th.

(Whereupon Court's law clerk approached bench with copies of the orders at issue.)

THE COURT: Okay, Mr. Holder, I'm going to read these. This is Judge - - The person who came up here is Judge Wilkinson's law clerk.

MR. HOLDER: Oh, yeah.

THE COURT: And she had the orders in her hand, um, so, um, give me a moment. You can have a seat.

MR. HOLDER: All right. And your Honor, Court's indulgence, if you would pay particular attention to the facts section.

THE COURT: I'm going to try and skip that right now.

MR. HOLDER: Okay.

THE COURT: I want to see what was actually ordered.

MR. HOLDER: Okay.

THE COURT: And then I'll go back to the facts if I need to.

MR. HOLDER: Understood. Thank you, your Honor.

(Pause for approximately two minutes.)

THE COURT: What these two orders, and I'll take judicial notice of these, the one in September

established the property lines. And the one in January 30th of 2023, issued an injunction against you - -

MR. HOLDE: Correct.

THE COURT: - - from using the property under the creek.

MR. HOLDER: Well all the plaintiff's property, the entirety.

THE COURT: Right.

MR. HOLDER: But with particular attention, correct.

THE COURT: Right, particularly - - It was that portion which was really at issue.

MR. HOLDER: Correct.

THE COURT: Um, but it also talked in the September case, I think what is very obvious is that "the boundary line between plaintiff's lands and the lands of defendant, Uncle Eddies Brokedown Palace, LLC," so the Court is acknowledging that the - - that the adjoining property owners are the Estes and Uncle Eddies Brokedown Palace. All right, you may proceed.

MR. HOLDER: And then with that order, when we're looking to - - to the Maryland case law on collateral estoppel, you know we - - I think we agree that it's not *res judicata*. It's not the same cause of action for fraud. It's a separate cause of action. There's some separate parties and - - and clearly everything hasn't

been litigated so that limits you with the collateral effect of the order to a couple things - the identical facts that were litigated in that case. They have to be identical to what was litigated in that case. Um, they have to have been actually determined by the prior proceeding. And we must have had a full and fair opportunity to litigate those facts. That case is still ongoing, um, negligent misrepresentation is a defense to a - - a fraud as an innocent mistake. That's certainly going to be litigated in the trespass. To the extent Mr. Frederick is a necessary party to that case, we have a joinder problem in that party, consolidation would - - would cure a lot of issues with the remaining trespass charges because this - - this - - Mr. Frederick represented to me that once I bought 414, we owned to the creek. Now as a matter of law, like I decided differently because I decided to plat. Okay, I can accept that as that's Judge Wilkinson's order. We sign this plat; we gave Mr. Estes the corner of the creek that wasn't in the title line. Mr. Estes has it now. He hasn't paid for it. That's fine. That's what Judge Wilkinson decided because we signed the plat. We were fooled. I believed Mr. Frederick when he told me the survey he gave me was title line on the deed that I handed to him. And that just wasn't true.

Um, so - - *Cf. Welch versus Gerber Products* in Maryland was a car seat case. And - - And they state in that case, and I *Cf.'d* it because I don't - - It was more of a consent order, but the difficulty is that when there are many situations where the Doctrine of Non-Mutual Collateral Estoppel would just be manifestly unfair. And I think this is one of those applications. We had a summary judgment. I wasn't able to litigate these issues. The facts in the opinion that Judge Wilkinson says that's all he relied on. He said, "For all the reasons stated above." He didn't say, "For reasons outside of this." "For all the reasons stated above, these facts, 2018, the deed that he presented in his motion as exhibit three says according to a recent April 6 survey, 2018, by Frederick Seibert." That new description got put on record. That's why the property lines match because Frederic Frederick didn't tell me he changed the courses and distances. Now I believe Mr. Frederick said these lines were in the waters and the statement doesn't matter because the title is in the water, and that's what we're appealing, that judgment, as a matter of law, that these courses should, um, prevail over - - over a call to a natural (inaudible). That's not for this case. This case has nothing to do with about whether the lines should be in the middle of the

Antietam Creek or not, it has to do with the fact that I wasn't put on notice by the surveyor that I confided in. Because he was talking to Mr. Estes about his property dispute, and they colluded together to draw this line and to hide it from me as long as they possibly could.

THE COURT: Go ahead.

MR. HOLDER: That - - That's what this case is about. That's - - That's what at least - - Maybe you don't see it, but that's what I was attempting to plead, and I apologize that I wasn't specific enough. I tried to keep the - - the pleading brief and I did have an intention that it could be consolidated with other pleadings in the 430 and held as one trial. Um, I did file the - - Mr., um, just address this as a negligence. I did ask for documentary evidence under Courts and Judicial Proceedings. So before we can dismiss that, Mr. Frederick would have to provide me that evidence so that I can go get an expert certificate of merit to show that he did deviate from the title lines.

And specifically what I would be, um, showing is COMAR 09.13.06.03, um, that Mr. Frederick is required to show the location of the property's record boundary so long as the information exists in the public records and is properly indexed and conflicting. Record property boundary line's locations which may be differently

located the property boundaries. COMAR 09.13.06.03 C.(2), "have the potential for disclosing conflicting descriptions of the property boundaries or affect the location of the property boundaries." COMAR 09.13.06.03 F.(2), "Lines of occupation do not conform to the deed lines." "A comparison in the adjoining property's deed descriptions indicates the existence of a gap or an overlap and/or why separate illustrations were not required on Plat 10955 to depict any gaps, (unintelligible) or overlaps in the deed lines." Mr. Frederick didn't show me any of that. I didn't know. I trusted my surveyor was gonna actually drawn the title lines by the deed that we were buying. He didn't do that. That's what the complaint states with particularity. And that caused me to be engaged in all kinds of third party litigation, charged criminally, as Mr. Estes has brought into the record. I've been - - I mean I've had a sweeping victory in the district court. Nobody has convicted me of anything in the district court. Everything has been dismissed.

THE COURT: None of that is before me.

MR. HOLDER: Mr. Estes had put it there, sir.

THE COURT: Yeah, I told him the same thing.

MR. HOLDER: I - - I - - I understand.

THE COURT: It's just not - - You guys are really

arguing at each other, not at me.

MR. HOLDER: I - - Well I apo - - You're probably right and I apologize.

Um, so *Poffenberger versus Risser*, 290 Md. 631 at page 636 held that "the discovery rule's applicable generally in all actions and the cause of action accrues when the claimant in fact knew or reasonably should have known of the wrong." That's *O'Hara v. Kovens*, 305 Md. 280, 286 to 30 (sic). "In order to benefit from the statute, (and the statute they were talking about is Courts and Judicial Proceedings, 5-203, (which is fraud and concealment), a claimant need not show, in addition to the fraud complained of a separate fraud which conceals the first fraud." I don't - - Just the fact there's a fraud allows me to use the discovery rule. And as I said in my, uh, motion to Mr. Frederick on, uh, reply here with the statute of limitations. Uh, *Litz v. Maryland Department of Environment*, 434 Md. 623, um, "a motion to dismiss ordinarily should not be granted by a trial court based on the assertion that a cause of action is barred by the statute of limitations unless it is clear from the facts and allegations on the face of the complaint." I don't think that it's clear from the face of the complaint that this is barred because I specifically say in the complaint, um, at paragraph 25

that I didn't discover it until the 430 case ripened at some point.

THE COURT: What do you mean by ripened?

MR. HOLDER: Well I - - At least - -

THE COURT: I don't know what you mean by that.

MR. HOLDER: At least when I got served with the initial complaint was January 22nd, out of an abund - -

THE COURT: January 22nd of what year?

MR. HOLDER: Of 2020.

THE COURT: Okay.

MR. HOLDER: Was the initial complaint to trespass that Mr. Estes filed in the district court. Okay? So I file - - made sure I put this claim in the record before January 22nd of 2023 out of an abundance of caution because I would say at some point during - - You get sued for trespass, right, you have - - you have to be charged. Some reasonably prudent person would go investigate why you're getting charged for trespass if you can't get into the creek. So during the course of that investigation, I come up with these title lines. Dowling comes up. My MSJ(1) - -

THE COURT: You're - - You're - -

MR. HOLDER: - - (6)(G)(9).

THE COURT: You keep using generalities like "during the course of this investigation."

MR. HOLDER: Okay.

THE COURT: And you - - but you're talking about a bunch of cases. Please be specific what you're talking about.

MR. HOLDER: In the course - -

THE COURT: I'm trying to follow you.

MR. HOLDER: Okay. In the course of investigating these trespass claims alleged by Mr. Estes against me on January 22nd, 2020, I began to look at the title. I began to dig into the title. Uh, and if you look on my motion for summary judgment, the second one I filed, exhibit "F," and I have a copy here if it please the Court of that exhibit that's filed under affidavit and part of this record.

THE COURT: You filed it as an exhibit in this case?

MR. HOLDER: I filed it as an exhibit in this case under "Affidavit" with an email.

THE COURT: All right.

MR. HOLDER: Where Mr. Frederick actually draws for me the deed that I was supposed to get with these title lines. He finally concedes and that's in March. So sometime before March, Mr. - -

THE COURT: March of?

MR. HOLDER: Of 2020.

THE COURT: Okay.

MR. HOLDER: Sometime before March of 2020, Mr. Frederick told me, told me what was doing on, that "Hey - -

THE COURT: Okay.

MR. HOLDER: - - I did conceal this." And all I asked Mr. Frederick to do, as it said in my pleadings, is draw me a survey with the title lines. That's what I want you to do so I can take it to court and show that you didn't draw what was on the deed. That's all I wanted him to do. He refused to do that.

THE COURT: Okay.

MR. HOLDER: He, uh - - His letter, I have exhibit "G4" to my first motion for summary judgment, under affidavit, Mr. Frederick draws in red the title lines he concealed. That's on February 12th of 2020. I had to get this claim in. I was - - I was up against - - You know I couldn't wait for case 430 to - - to conclude. I was restricted under case management order in 430. I pled *in pari delicto* as a defense. Certainly, um, negligent misrepresentation will be part of that in equal fault of the trespass.

THE COURT: In 430?

MR. HOLDER: In 430, correct. So that defense is going to be litigated in 430 for sure. These issues are going to have to be brought to a trier-of-fact, um, to

the jury.

THE COURT: In 430.

MR. HOLDER: In 430. Why - - Why would consolidation of - -

THE COURT: We're not talking consolidation we're talking about this case. This case only.

MR. HOLDER: Okay. Okay. All right, let me see if I have anything else.

THE COURT: There's no motion for consolidation in front of me.

MR. HOLDER: It is on the docket.

THE COURT: For today?

MR. HOLDER: Well it was on the docket as much as Mr. Frederick's motion was on the docket for today also.

THE COURT: Did he file a motion to consolidate anything?

MR. STEELE: I did not, your Honor.

MR. HOLDER: No, I filed a motion to consolidate, your Honor.

THE COURT: All right, when? Tell me exactly when?

MR. HOLDER: Uh, March 9 - - Let's take a look here. It should be March 9th. I've got, uh, March 11th, I'm sorry. March 11th. It was an omnibus consolidation and summary judgment.

THE COURT: Oh my Lord. Okay. No wonder it gets

missed. Don't do things like that that.

MR. HOLDER: Okay.

THE COURT: Don't plead omnibus. Things like that, like a consolidation get set aside when you file summary judgment because there are antithetical to each other. You should have filed two motions.

MR. HOLDER: Okay. I understand.

THE COURT: Did you pick up the fact he's filing for a motion for consolidation?

MR. STEELE: No your Honor. I was here today to address my motion.

THE COURT: I understand. I'm just - - Wow. (Pause for approximately 30 seconds.) Okay, that's - - All right, keep going. How much longer are you going to be in argument?

MR. HOLDER: Well I think - - I think - -

THE COURT: I'm not trying to stop ya, I'm just - -

MR. HOLDER: I think the threshold issue really is what is collateral and what is judicially economical to resolve this portion of the case that hasn't been litigated by the 430 final order, which is the concealment. The concealment brought rise to the 430 order and the declaratory judgment in this case gives rise to the fraud.

THE COURT: It's declaratory.

MR. HOLDER: Declaratory, okay. The declaratory judgment in this case, it ends the controversy. The decla - - The declar - - I'm sorry, declaratory - -

THE COURT: That's okay.

MR. HOLDER: - - judgment, and I'm going to - - I'm going to look right at - - I'm going to read that exactly as its written right to you here. Um, it solves two - - two things. Um, "Affirmatively declare that the new monuments of the blazed tree, a fence post and a fence line used to describe the Frederick deviation were not utilized in the deed dated from June 28, 1990, grant from Ellis Remsburg to Mr. Jolles, which is what - - what Mr. Estes is saying was on his deed. It wasn't ever on his deed. His deed wasn't (inaudible).

THE COURT: The deed lines is a different case. That's a different case. You're not going to get anything dealing with deed lines in this case. That's the 430 case.

MR. HOLDER: Okay but the deed lines have been decided in the 430 case.

THE COURT: That's exactly right, you're not going to get it decided again here.

MR. HOLDER: You can't change the law. The legal effect of the earlier deeds are still - - They haven't been voided.

THE COURT: The - - I'm not sure to what you're referring. If you're talking about who owns what property, as of today, as of the Order of, um, Judge Wilkinson - -

MR. HOLDER: No sir, that's a - -

THE COURT: - - that had been decided.

MR. HOLDER: Absolutely, your Honor. Absolutely. I'm not arguing that at all and - -

THE COURT: And no one is going to go and decide, on an academic basis, who owned what property back in the past. That - - If it has any basis on anything of a justiciable controversy, it has to be something that is active and ongoing now.

MR. HOLDER: Which it is because of the fraudulent concealment in this case, the declaratory judgement gives rise - -

THE COURT: You - - You're mixing things. And I think that's where you've gotten in trouble with these pleadings. You have thrown so many of your assumptions intermixed with things that you are talking about with, uh, prior deeds and things like that, that it's hard to tell what it is that you're really interested in. I mean I think I know, which I'm going to ask counsel here a couple questions when you're done, but you've taken what I think was a core thing that you could have very

succinctly argued and pled and blown it into all this other stuff that quite frankly a lot of it doesn't make sense.

MR. HOLDER: I can certainly amend the complaint and narrow it down - -

THE COURT: No, no. Nope.

MR. HOLDER: - - as the Court would - -

THE COURT: We're here today. Um, all right go ahead, fin - - I want you to finish up because then I've got questions for counsel.

MR. HOLDER: And, you know, basically their motion to dismiss, okay, and their summary judgment, they - - they have to say there's a controversy and the dec - - the declaratory judgment, because they're saying that these property lines be and always were. And my complaint says no they weren't always like that. The legal effect of these deeds have not been voided.

THE COURT: That's not what they're saying. No, they're saying they - - they have a judgment. The Court has ruled. You're - - You're done. I mean, that's it.

MR. HOLDER: I can understand that.

THE COURT: I'm not sure what you're asking me to declare.

MR. HOLDER: I can understand that it would be a judgment of all the issues that could have been litigated

if were dealing with *res judicata*, but we're not dealing with *res judicata*. We're dealing with collateral estoppel and that limits you to the facts that were actually decided in the case. And to do that, we have to scrutinize that order. You're going to - - We're going to have to scrutinize through the order what facts were actually decided.

THE COURT: I just did.

MR. HOLDER: Okay.

THE COURT: They decided the boundary line.

MR. HOLDER: Okay and I'm not arguing about the boundary line. I'm arguing about that I was - -

THE COURT: That's - -

MR. HOLDER: Okay.

THE COURT: That's the problem. But you keep intermixing that, which is what is so confusing.

MR. HOLDER: Which is why I think consolidation would be appropriate.

THE COURT: That would just make it a mess.

MR. HOLDER: So you're going to take away my defense in the trespass?

THE COURT: I didn't say anything.

MR. HOLDER: Well the minute you decide this is dismissed with prejudice, they're going to go screaming in 430, "There's no fraud," "There's no fraud," "There's

nothing." "This is *res judicata*." "This is collateral estoppel, Mr. Holder, you're done." "You did this intentionally."

THE COURT: A dismissal doesn't do that.

MR. HOLDER: They're all parties. It would be conclusive.

THE COURT: If I dismiss all of this - - I'm not sure what all I'm doing just yet, but if I dismiss all this, they're arguing the technicalities and things. If I - - If I, for instance, said it was barred by the statute of limitations, if that was my ruling, does that say there's no fraud? Of course not.

MR. HOLDER: Okay.

THE COURT: You know? Now that doesn't give you a right to sue for fraud.

MR. HOLDER: Right. You've already foreclosed that. I did - -

THE COURT: Right, if I do - - If I - - If I make that, but that doesn't say there was no fraud. That just says, you - - if there was fraud, you missed your opportunity.

MR. HOLDER: You could say that the fraud was just intrinsic to the 430 case and not extrinsic, which would be a completely argument, and that would be the right to bring an action in equity to have relief from an action

at law. That's a completely different body of water, your Honor.

THE COURT: I don't think you want to get into that because that's - - I brought that up to them where you would really mix that and said some really contradictory things in your pleading where you don't have inadequate remedy at law, so you've got to have this remedy, yet you're claiming inadequate remedy, so I - -

MR. HOLDER: It was the alternative for cause of equity for my injunction that - -

THE COURT: Yeah but look at the way you pled it.

MR. HOLDER: Well that's - - that's how you plead equity; you don't have remedy at law. That's what gives you jurisdiction in equity. If you have adequate remedy of law, you have no jurisdiction in equity.

THE COURT: Well you can - - You can plead equitable remedies in addition to inadequate remedy at law.

MR. HOLDER: So it's just specific performance on the contract which I plead.

THE COURT: You don't have to say what you've said.

MR. HOLDER: Okay.

THE COURT: Go ahead.

MR. HOLDER: I thought I did, so I said it, because it's - -

THE COURT: But I'm not going to rule based on that.

MR. HOLDER: Okay.

THE COURT: It's just another one of the nightmares in trying to read through this.

MR. HOLDER: Um, well if you're not interested in the extrinsic or intrinsic difference at all and we're not going to have that argument, I - -

THE COURT: You can argue whatever you think is appropriate.

MR. HOLDER: Well I think it's appropriate to argue that since I'm asking to open a judgment in equity potentially as an alternative, um, and that would be that Mr. Estes represented to the Court that Mr. Frederick is likely the key witness in the case. Okay? Yet Mr. Frederick's attorney, three different times, represented to the Court that he only used public records. That was in a motion for protective, uh, filed by Savannah Selvaggio, motion for - -

THE COURT: Did you - - Are you arguing things that you've placed in your pleadings?

MR. HOLDER: Well they're record in the other case that we're taking judicial notice of.

THE COURT: No.

MR. HOLDER: Okay.

THE COURT: I - - I took judicial notice of orders.

MR. HOLDER: Okay.

THE COURT: I'm not - - I can't take judicial notice of everything that's happened in a particular pleading because I don't - -

MR. HOLDER: Understood.

THE COURT: I don't have that.

MR. HOLDER: Understood. Okay. Then I'm going to - -

THE COURT: And I guarantee you, if you say - - stand here and argue what happened in that, counsel is going to say no that's not what happened, this is what happened, and Mr. Estes is going to have a third version of it, so it's like - -

MR. HOLDER: We'll - - We'll save that for a later time if - - if it becomes that far.

THE COURT: Great. Thank you.

MR. HOLDER: Okay. Just I'll strike that then.

THE COURT: That's okay. That's all right, you don't have to strike it.

MR. HOLDER: I don't want to put any facts on the record that aren't appropriate.

THE COURT: I didn't say you were doing anything intentional.

MR. HOLDER: And I - - I did in my - - in my opposition to Mr. Frederick, I mean I do concede that - - that there is merit to the stay. I don't even want to go

through the burden of amending this complaint before we get a final order out of the appeals court on this boundary line decision because then they're going to go file more motions to dismiss or what - - whatever becomes of it you're going to have to sit in here and listen to use for - - until seven o'clock at night and - - (laughter) - -

THE COURT: Or seven in the morning, whichever it is.

MR. HOLDER: Whatever it is. Um, maybe we've been here for days.

THE COURT: That was an excellent joke, I appreciate that. Thank you.

MR. HOLDER: So rather than do all that, there is merit to just kicking the can on this thing, and let's see what the appellate court says about Judge Wilkinson's boundary decision. We'll litigate the appeal. We'll come back. If we have to consolidate it because we're going to use it as a defense, we can argue that then. We can deal with it.

THE COURT: All right.

MR. HOLDER: It's for judicial economy and I will concede that there is a lot of merit to that.

THE COURT: Okay. Now having said that, if there's anything else you want to argue, you need to argue it. I'm going to take that under consider - - Here's what I'm

going to do, just so you understand.

MR. HOLDER: Okay.

THE COURT: We've been at this for a while, so we're all going to need a comfort break in a few minutes.

MR. HOLDER: Okay.

THE COURT: So as soon as you're done arguing and I get my questions answered, I'm going to take a break. And depending on what time it is, well we may - - we may let you take a lunchbreak and come back after lunch. I hate to do that, but, uh, it's just maybe the best thing to do.

MR. HOLDER: I should - -

THE COURT: That way then I can go think through everything that's happened and take a look at my notes again and make some - - try to make some sense out of this and decide what to do.

MR. HOLDER: So we hit - - We hit - - I think we can count one pretty good. I think the facts are there. I think they support a claim for relief for fraud. I think there's enough there that if I had to make some minor alterations, I could deal with that.

Count two, tortious interference. Okay. Um, the tortious interference, I pled that there was a contract between Mr. Frederick. I pled that I was interfered with my property and casualty insurance. I pled that Mr.

Estes interfered with that contract. So alternatively to being a conspirator with Mr. Frederick and the fraud, Mr. Estes came in and int - - tortiously interfered with my contract with Mr. Frederick. He tortiously interfered with my contract with Mrs. Estes. And these are clandestine in nature. These conspiracies. You're not going to get a whole lot of discoverable evidence until you get some - - some questions answered from these defendants and some communications, and what they were texting back with each other, and what their intention and their motive was to conceal this - - this deceit and - - and how they went out - -

THE COURT: So you're saying you need to get discovery to try to prove that?

MR. HOLDER: To - - To get specifics. I mean before I get pushed off on a summary judgment.

THE COURT: Because you don't - - you don't have that now.

MR. HOLDER: I have some of it. I have some of it. I have conversations between their lawyers, things like that. Um, I have - -

THE COURT: Between their lawyers?

MR. HOLDER: I have a good bit of conversation between the attorneys yeah.

THE COURT: Okay. So now - - You haven't sued the

lawyers.

MR. HOLDER: Well they're the agents. Again, they're all the agents. I'm not - - I didn't want to drag everybody in Washington County into this lawsuit. I'm trying to get to - -

THE COURT: So it's the lawyers - -

MR. HOLDER: - - the respondents' lawyers.

THE COURT: - - who, on behalf of their clients, who conspired, is what you're saying?

MR. HOLDER: Their clients use their agents to conspire is what I'm - - I think that's a better. I mean I don't think the lawyers can do it. Why would they - - They're acting on their client's behalf.

THE COURT: And their conspiracy was to keep you from knowing what Mr. Frederick was doing?

MR. HOLDER: Initially in the discovery, yes, to keep Mr. Frederick out of court so I couldn't examine him, so I couldn't get the facts to - - to basically keep this adversarial proceeding away from the trier-of-fact.

THE COURT: Okay. All right. Anything else?

MR. HOLDER: Well we got - - We did, uh, number three. Um, I think the injunction is just pretty simply stated there. Uh, you say loss of consortium is done. So, uh - -

THE COURT: Yeah, you - - you fouled that one up.

MR. HOLDER: I mean I guess I would just argue that you said interested parties are people interested in a claim. Deena Holder is here, she can - - she can file a counter-claim. The operative facts are here.

THE COURT: The law is it has to be brought jointly by a husband and wife. So what happens a lot - - I told you I did personal injury work. Right? So when - - If - - If I had a client who was hurt badly in a car crash and it interfered with his marital relationship, rather than my client versus whoever hit him, it had to be my client and his wife versus whoever hit him. Now his wife's only interest unless, uh, I'm not going to get in - - There could theoretically be other interests, but, um, but usually not. The real interest would be the loss of consortium claim and that would be the only reason why she would even be in it. And sometimes she didn't even testify.

MR. HOLDER: And I read that law and I understand that.

THE COURT: Right.

MR. HOLDER: That it has to be filed jointly.

THE COURT: Yeah.

MR. HOLDER: I was just under the impression an interested party would satisfy that condition and you said it doesn't, - -

THE COURT: Nope.

MR. HOLDER: - - so that's your ruling.

THE COURT: Right.

MR. HOLDER: Understood. Um, I do think I plead - - You know I went to the, um, pleading standards of Maryland, Westlaw, Nexus, Lexus, I mean everybody goes to those. They get the pleading standards. I think I pled a viable cause for, um, severe emotional injury, uh, with that cause. I didn't - - Okay I said two dozen people. Well I didn't - - I thought about the alternative to what Mr. Estes was asking. If I say a thousand people, am I going to drag a thousand people into court or is two dozen going to be enough?

THE COURT: You know what's interesting, most of the times when you're pleading strange things, you start with jury instructions.

MR. HOLDER: Um-hmm.

THE COURT: Because that lays out, for a jury ultimately, all the elements. And sometimes going to the types of places you described to find pleadings, it gets real confusing.

MR. HOLDER: Okay. I - - I think I followed them. I'm just going to say I think it is pled - -

THE COURT: I understand you wouldn't have filed it unless you thought that.

MR. HOLDER: Right. And I - - As far as you - - I'm not asking for quantum merit. I'm not asking to calculate actual damages here on the unjust enrichment claim, I'm asking for, in equity. Mr. Estes has gotten a piece of property that he didn't pay for. Okay? He's received a benefit. He never paid for it. And I'm asking to just have that returned to the correct property due to this fraud and concealment.

THE COURT: Okay. You gave him the property.

MR. HOLDER: I did when I signed Plat 10955. We're just going to ignore the fact that you have to have a grantor on the deed in Maryland because Plat 10955 gave that to Mr. Estes.

THE COURT: Okay. How did that happen if you just signed it because you didn't own it?

MR. HOLDER: That's what's before - -

THE COURT: You weren't an owner.

MR. HOLDER: That's before the Court of Appeals. That's what - - That's the issue.

THE COURT: But how - - how did it - - How could it possibly if you signed it, unless you signed it on behalf of Uncle Eddies.

MR. HOLDER: Correct. I signed it as manager of Uncle Eddies, correct.

THE COURT: Okay. All right. All right so that's

different. All right, I got you.

MR. HOLDER: So the unjust enrichment. Uh - -

THE COURT: I got you.

MR. HOLDER: I think that - - I think you've heard enough. I appreciate your time, your Honor.

THE COURT: Well it's up to you. Okay.

MR. HOLDER: I'm going to - - I'm going to let you go. I think you've heard enough.

THE COURT: All right. Counsel, um, was there a signed contract between your client and the plaintiff to perform the survey work?

MR. STEELE: Your Honor, what I was referring to actually was if you go to the, um, if you go to Plat 10955, it lists, and that's Frederick, uh, my clients, and then it says, "parcel reconfiguration," uh, in the upper righthand corner.

THE COURT: Where do I find that in here?

MR. STEELE: This is - - It's, uh, it's an exhibit to my motion, uh - -

THE COURT: You filed your motion, uh, let me see?

MR. STEELE: My motion is, um, on the 5th of April.

THE COURT: Yeah I was just finding it. Okay.

MR. STEELE: And then it is exhibit - -

THE COURT: Which number?

MR. STEELE: Uh - -

THE COURT: You've got a bu - - you've got six of them. There's a boundary survey, deed, plat, deed, plat, opinion.

MR. HOLDER: It's a boundary survey on number six.

MR. STEELE: Is it six?

MR. HOLDER: I think six is the boundary survey, yeah.

THE COURT: Six is the boundary survey.

MR. STEELE: So, um, and if, uh, so Plat number 10955 - -

THE COURT: Wait a minute, I've got that. There's - - Let me get to that. All right, hold on one second. Final approval. All right what is it down here that you want me to see?

MR. STEELE: Well just that - - that the - - the work was done on behalf of the - - you know in the upper righthand corner where it says, "parcel reconfiguration."

THE COURT: Okay.

MR. STEELE: It's Deena Holder.

THE COURT: I'm trying to get to it because it's - - All right so the owners are Deena Holder and Uncle Eddies Brokedown Palace, LLC.

MR. STEELE: Right but it's - -

THE COURT: Okay.

MR. STEELE: It's a reconfiguration of each of their

property and it's - -

THE COURT: I gotcha.

MR. STEELE: And it's - - Uncle Eddies is the - - is the client. That's what I'm referring to.

THE COURT: I gotcha. Okay.

MR. STEELE: And coincidentally this is April - - this is the April 2019 document that shows that, and for statute of limitations purposes, that he certainly is on notice as of that date. Um - -

THE COURT: Well let's - - let's go to, um, the issue that he says your client misrepresented what he did.

MR. STEELE: Your Honor, I'm not - - That's - - First of all, it wasn't pled in the complaint the way he argued it here today.

THE COURT: All right, let's - - Let me - - The hard part is there's, before we even get to the counts, there's so many pages of - - of a kind of a laundering - -

MR. HOLDER: Your Honor, I would just point you to "Fred's Fraud," those pleadings spell it out specifically.

THE COURT: The what?

MR. HOLDER: The "Fred's Fraud" that - - that the fraud – just those specific pleadings spell it out pretty much. I - - I mean I thought it a very elementary level.

THE COURT: All right, I'm going to have to take a look at that because, um, the - - if he has pled that there was - - that your client concealed, that doesn't put him on notice with t his plat. The hard part though is I still have to think through that - - his standing because I don't - - Uh, you're a manager, you're not an owner. So - - All right.

MR. STEELE: Well your Honor, in addition, it's not just, uh, a statute of limitations. There's also the - - There's the standing, as you pointed out. There's also the collateral estoppel.

THE COURT: Collateral estoppel, I think yes, it is, but it's, um, I'm more intrigued with stay - - with the stay because you even brought that up at that time, uh - -

MR. STEELE: May I address that, your Honor, again?

THE COURT: Sure.

MR. STEELE: That is only if the Court concludes that that is the only grounds on which it might dismiss the case, that it should at that point stay.

THE COURT: I understand. Of course.

MR. STEELE: Okay. Um, so - -

THE COURT: Because if there's a different ground to do it - -

MR. STEELE: Right.

THE COURT: But it - - But I have to go back - - I am going to reread the, um, thing - - I got to tell you I really hate what you did in your pleadings with the "Estes Evil" and "Fred's Fraud," and I forgot what you said about Mr. Dowling, but, um, it's just not an appropriate pleading. Um, but I will read the substance of what you pled again because that - - that's what's giving me more trouble here.

MR. STEELE: And your Honor, if I may, just - -

THE COURT: From a dismissal standpoint.

MR. STEELE: Correct. But what I would say, your Honor, isn't it just a matter if a word appears here or there, fraud needs to be pleaded with particularity?

THE COURT: Well here's the thing, um, if I - - if I go that route, and if I decide that, then it's not a dismissal with prejudice. It's a dismissal without prejudice because he's correct on that, um, I'd have to be able to find that there is no way for him to be able to plead facts sufficient to create a cause of action. I'm not ruling I can or I can't yet, I'm still thinking that through but I - - that's a much tougher or higher hurdle to look at.

MR. STEELE: Correct, your Honor. Again that would also though dovetail into the deeds and plats overtime that show - - At the heart of this, what Mr. Holder

really wants is for somehow it to be undone so that the order goes through the middle of the creek. That's ultimately what his goal is here. And as a legal matter, even 430 that's on appeal, but just the deeds and everything that the Court relied on to make that finding, uh, there is no - - there's just no cause of action here.

THE COURT: I understand. But I've got to take a look at what he has because what he argued was that, assuming he as standing, what he argued was that Mr. Frederick did not disclose to him the fact that there is a, um, a deed or a plat or something which could support his claim. Is that a material - - I don't - - breach? I don't know. I'm still thinking on that. Anything else? Finish your thought first.

MR. STEELE: Oh - -

THE COURT: Finish your thought.

MR. STEELE: Oh, yeah.

THE COURT: I said that same thing to Mr. Holder too.

MR. STEELE: Right. No your Honor, just again, it isn't limited just to this fraud thing. They - - My client has multiple - -

THE COURT: Oh I'm not - -

MR. STEELE: Right.

THE COURT: Yeah I'm going to address each - -

MR. STEELE: Okay. That's it, your Honor. Thank

you.

THE COURT: - - count. I mean I - - We've already talked about the one count that's going to come out. You know the, um, loss of consortium, so - - All right, I've got five of 12. Let's - - Will they need this courtroom this afternoon?

CLERK: I'm sorry?

THE COURT: Do they need this courtroom this afternoon?

CLERK: No.

THE COURT: Okay. Um, are you able to come back?

MR. STEELE: Yes your Honor.

THE COURT: At one? All right then we'll resume again at one o'clock.

(Whereupon at 11:53 a.m. court was in recess. At 1:01 p.m. court reconvened and the following ensued:)

THE COURT: Good afternoon. Please be seated. All right we're back on the record, Holder versus Frederic Frederick, et al., 23-000036. Plaintiff and, uh, Defendant Mr. Estes is present and counsel for Mr. Frederick is present.

All right, um, I'll ask you to bear with me because there's a lot here, uh, and I'm going to go through each of these things.

Um, the first thing I'm going to do is strike all

claims for attorney's fees. You're not an attorney. You don't have an attorney therefore you can't get attorney's fees.

Secondly, I'm going to deal with, excuse me, Defendant, John Dowling. Um, as indicated during our discussions, um, none of the counts make a claim against Mr. Dowling. The allegations leading up to those counts include allegations of potential wrongdoing by him, but they do not - - but it's not carried over then into the individual counts. Um, therefore, the case against Mr. Dowling is dismissed with prejudice, all counts.

All right now, what I'm going to do from here is go through each of the counts, um, to discuss the individual counts and as it relates to individual defendants.

But before I do that, I'm going to talk about standing because I've looked at this matter further, uh, during the lunchbreak, um, and it's just - - it's abundantly clear that as to most of the counts, not all, but most of the counts, Mr. Holder just doesn't have standing because if they were to be brought by anyone, it would be the property owner. The property owner, um, is it just went right out of my mind.

MR. STEELE: Uncle Eddies.

MR. ESTES: Uncle Eddies.

THE COURT: That's it, Uncle Eddies, thank you. Um,

and I know it's a longer name, but it's - - it's that entity. And I know it's easy to be confused sometimes when you - - you are the sole owner, from what I understand, nobody said that, but it's my understanding from reading things, sole owner of Uncle Eddies, and you take actions for Uncle Eddies, so it's easy sometimes to confuse the relationships, but under the law, corporation is a person, an entity, uh, and deserves the respect, um, that that entails. Along with that, in common with that are the rights that come with that. And so, uh, the corporation may have certain rights to bring certain actions. Um, which you can't do for them because the corporation has to be represented by an attorney. I understand their attorney is not here now but was present.

MS. HOLDER: He's in a hearing, but he will be back.

THE COURT: Okay. I mean he doesn't have to be here, um, because there's no motion regarding them. Um, but I find that, um, on a number of these cases, you lack standing. I'll be more specific as we go through.

The first is fraudulent concealment. The, um, underlying principle with the fraudulent consis - - uh, concealment is the issues that were related to, I think we've been calling it case four - - number 430, that were decided by Judge Wilkinson. Um, and I - - It is related

to the appropriate boundary line for adjoining properties. So if someone was aggrieved, it would be one of the people who abut on that boundary line, which it's my understanding it's Mr. and Mrs. Estes and Uncle Eddies and not Mr. Holder. And therefore, the Court finds that you have no standing under this.

Now there is a number of other problems with this, um, pleading that were pointed out during, uh, that amount to deficiencies. But I'm ruling on the issue of standing because I'm dismissing count one with prejudice. If I had done it just on the deficiencies, it would have had to be without prejudice. And so I'm going to do it on standing because I don't think you had the right to bring the action.

Count two, tortious interference with business relations. Um, all right, give me a second. This count is improperly pled. Um, it goes - - The allegations go beyond, um, the - - anything that could be barred, either by statute of limitations or collateral estoppel. But they're bald allegations without any specificity. And I know that you allege that they conspired and they have done other heinous things, but you really did not say how. Um, therefore the Court finds that this is not pled properly and I'm going to dismiss count two without prejudice.

All right, declaratory judgment. Um, the - - the basis with this, uh, the problem with this is standing because it says, "Actual controversies exist between the plaintiff and defendants regarding deed overlap in the Northern Title line deviations." It's quite simply that is not correct. Legally. Um, because there's no - - Because defendant is not a property owner, excuse me, because the plaintiff is not a property owner, um, he has no standing to bring, uh, this count three for declaratory judgment and that will be dismissed with prejudice.

Count four, injunctive relief. Um, this is, um, not the appropriate way to plead an injunction in the first place. Secondly, it is, um, it, um, - - There has to be some kind of standing for harms and the harms are all related to the, um, property for which plaintiff has no standing. And based upon that, I'm going to dismiss this with prejudice.

Count five is loss of consortium. Um, we've talked about this, um, interesting the standing issue applies to this as well because the laws of consortium would be for damages related to, um, some wrong committed by one or more defendants and based on the wrong - - the wrongs they committed in relation to the property. But over and above that, the, um, plaintiff has sued his wife in this

case, who is as party defendant. And she has to join in an action for loss of consortium as a party plaintiff, and as I indicated before, that's a fatal flaw. So that will be dismissed with prejudice.

Breach of contract, um, this - - let me get to that. This is a claim against, uh, Defendant Frederick and his company. It does not relate to the Estes and therefore count six as to the Estes is dismissed without prejudice. There's no claim against them for this. And whether you mean to sue them for breach of contract or not, I kind of feel in my heart of hearts that you didn't really mean to sue them for breach of contract, um, but the end result of the way you pled it is that you did. So I'm dismissing that with prejudice.

All right now as to the, um, Defendant Frederick and his company, this is a standing issue. Um, the - - I still have this up on the screen. The plat, it mentions Uncle Eddies, uh, Uncle Eddies is the property owner. The, uh, I think this is another case where the roles that are intermixed can get confused. It can become confusing to someone who is not a lawyer and I think the plaintiff is confused by the roles, um, and so he sued in his own name, and he should not have. He has no standing to bring the case and therefore, uh, count six, breach of contract against Mr. Frederick and his company will be

dismissed without prejudice for lack of standing.

Malpractice in land survey or the way we would normally terminat - - uh, term that is professional malpractice. Once again, that also is an issue for standing. Um, there are other reasons, uh, that it probably doesn't apply, but I'm not going to get into I think there's a collateral estoppel problem. I think there's a pleading problem, but the bottom line is with standing, he has no right to bring the claim, it could only be brought by Uncle Eddies, then it has to be dismissed with prejudice. And as to the Estes, there's no - - obviously no claim against them. There's no allegations that they are land surveyors or a professional in that regard and, uh, so no facts against them, so it is dismissed with prejudice.

Count eight, intentional infliction of emotional distress. Um, this one, um, I spent a good deal of time on taking a look at this over the lunchbreak because it's, um, this is - - this is difficult because this is a personal one, so there's no standing issue. Um, there may be a statute of limitations issue. I don't think that has been adequately developed, so I can't find on that. I think there is a collateral estoppel issue because the basis of this all comes from the fraud, perjury, misrepresentations, concealment about, as

alleged, about the property dispute. I think it is, uh, it is not fully pled, it is not specifically pled sufficient to survive a motion to dismiss, so I am going to dismiss this, um, without prejudice.

Unjust enrichment is count nine. Um, this is not appropriately pled because as was argued, uh, by the defendants there has to be a benefit conferred, uh, and the defense has to recognize that benefit and then there has to be inequitable result for them to retain that benefit. Um, and number one, there's - - there's really no - - I'm not sure what benefit because there's nothing in here that says what benefit they received. And the benefit, if anything, that I can glean from this would have to have been property related. And property related could only be brought by the owner of the property. And therefore that is a fatal flaw to this because the plaintiff lacks standing. And because of that, count nine is dismissed with prejudice.

All right now having dismissed, um, all of the counts, if I think - - If - - At least two or three were without prejudice. I can't recall now. I didn't add them up. Um, but the rest were with prejudice. The case still remains open as to, uh, Justin Holder versus, um, Deena Holder and Uncle Eddies, LLC, I know it's, Breakdown - - Break - - Brokedown Palace, LLC. Uh, and I

am going to release the hold or the stay that I had on the case as it relates to those defendants. So they - - Their time for pleading is now on the clock, if you're - - I don't know whether you're planning on making any claim against them.

Does anyone have any questions? Yes sir?

MR. HOLDER: So you're dismissing with prejudice of counts one, three, four, five, six, seven and nine. Are final orders in this case appealable?

THE COURT: That is a, um, something that you have to ask an attorney for because judges can't give legal advice.

MR. HOLDER: Okay.

THE COURT: and - - And you would not - - If I said something you're not entitled to rely on it.

MR. HOLDER: Sure. No, okay I understand.

THE COURT: Right.

MR. HOLDER: All right.

THE COURT: Even though I know the answer, it's just not appropriate.

MR. HOLDER: I - - I think I know the answer.

THE COURT: Okay.

MR. HOLDER: Um, would the - - would the Honorable Court consider a motion to stay counts two and three or two and - - I'm sorry, two and eight, waiting on an

appeal? Versus me going out and restating these things.

THE COURT: No because the - - the basis on those wasn't standing. The basis on those was the underlying pleading.

MR. HOLDER: Okay.

THE COURT: So, um, you - - What I will do, and I probably should have said, I'll give you 30 days to amend the pleadings on those.

MR. HOLDER: I will have an amended complaint for you.

THE COURT: Normally I do it in 15, but I'm giving - - You're not an attorney - -

MR. HOLDER: Appreciate that.

THE COURT: - - and so I'm giving you extra time.

MR. HOLDER: And I would just note that Uncle Eddies and Deena have not been served.

THE COURT: All right. I'm just - - I'm just releasing stays. I said they're on the clock. I thought they had been served but it's - - It is what it is, as they say. You know?

MR. HOLDER: Sure. Understood.

THE COURT: Okay. Any other - - Any other questions? Any questions?

MR. STEELE: No your Honor.

THE COURT: All right.

MR. HOLDER: Thank you.

THE COURT: Have a good day.

MR. ESTES: Thank you, your Honor.

MR. STEELE: Thank you, your Honor.

MR. HOLDER: Thank you, your Honor.

PROCEEDINGS END AT 1:24 P.M.

DIGITALLY SIGNED CERTIFICATE

I HEREBY CERTIFY that I reported verbatim by electronic device the proceedings in the matter of Justin Holder v. Frederic Frederick, et al., Case No. C-21-CV-23-36, in the Circuit Court for Washington County, on March 8, 2023, before the Honorable William Nicklas, Senior Judge.

I further certify that the proceedings were transcribed by me to the best of my ability in a complete and accurate manner, and page numbers 1 through 111 constitute the official transcript of the proceedings.

I further certify that I am neither a relative to nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness whereof, I have affixed my signature this 25th day of May, 2023.

Tracy L. Zamora

_____

Tracy L. Zamora, Court Reporter

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

JUSTIN HOLDER, *

Plaintiff *

vs. * **CASE NO. C-21-CV-23-000036**

BENJAMIN ESTES, et al., *

Defendants *

****

TRANSCRIPT OF PROCEEDINGS

September 28, 2023
Circuit Court – Hagerstown, Maryland
Courtroom No. 7

The above-entitled matter came on for hearing

Before:

The Honorable William R. Nicklas, Jr., Associate Judge

Appearances:

Justin Holder, pro se, on behalf of the Plaintiff

and

Benjamin Estes, Esq., on behalf of the Defendants

and

Kevin Karpinski, Esq., and Edward L. Kuczynski, Esq., on behalf of Defendant, The Town of Keedysville

And

James P. Steele, Esq., on behalf of Defendants, Frederic M. Frederick and Frederick Seibert Associates, Inc.

and

Robert Kline, Esq., on behalf of Defendant, Uncle Eddies Brokedown Palace

Transcribed from electronic recording by:
Dee Barnhart, Court Reporter
Circuit Court for Washington County, Maryland
24 Summit Avenue, Room 222
Hagerstown, MD 21740
(240) 313-2554

P R O C E E D I N G S

(Whereupon this matter commenced at 9:30 a. m.)

THE COURT: Have a seat please. Give me a minute to see if I can get the computer up. How long has this been a courtroom?

COURT REPORTER: A couple years.

THE COURT: Is it? Okay, I was going to say, it certainly wasn't when I was coming up here practicing. All right, we'll call the case of Holder versus Estes, et al., 23-36.

MR. KLINE: Good morning, Your Honor. Robert Kline on behalf of Uncle Eddies Brokedown Palace.

THE COURT: Good morning.

MR. KLINE: Morning.

MR. HOLDER: Good morning, Your Honor. Justin Holder in proper person, Your Honor.

THE COURT: Good morning. You can have a seat.

MR. HOLDER: Thank you.

THE COURT: There's other attorneys here who have motions. If would you just identify yourselves.

MR. KARPINSKI: Sure. Good morning, Your Honor. Kevin Karpinski and Ed Kuczynski on behalf of the Town of Keedysville.

THE COURT: Good morning. Nice to see you again, Mr. Kuczynski.

MR. KUCZYNSKI: Good to see you, Your Honor.

MR. STEELE: Your Honor, I'm James Steele on behalf of non-parties, Frederic M. Frederick and Frederick Seibert and Associates. I don't believe we actually have anything pending, but we're prepared to address potentially matters that Mr. Holder and Mr. Kline may raise.

THE COURT: Didn't you all have a Motion to Dismiss?

MR. STEELE: It was granted.

THE COURT: Well it was, but we're here on a hearing on it today.

MR. STEELE: Okay.

THE COURT: I'll - - I'll explain.

MR. STEELE: Okay.

MR. ESTES: Good morning, Your Honor. Benjamin Estes. I represent myself in this matter. I'm the Defendant. I also represent Lisa Estes, my wife.

THE COURT: Good morning.

MR. ESTES: Good morning, Your Honor.

MR. STEELE: Your Honor, may - - may we go up to the bench?

THE COURT: Sure.

MR. STEELE: Defense table. Thank you.

THE COURT: Can they all kind of squeeze around

somewhere?

MR. STEELE: Sure.

MR. HOLDER: And I can slide over, and they can…

MR. KUCZYNSKI: Your Honor, you mentioned - - this - - this was the Register of Wills Office.

THE COURT: Oh, okay.

MR. KUCZYNSKI: When you were rumbling around the courthouse.

THE COURT: Right. I knew something had to be in here, but I just didn't know what it was.

MR. KUCZYNSKI: Yeah. Technically, the Orphans Court was in here somewhere too.

THE COURT: Oh, okay.

MR. KUCZYNSKI: Yeah.

THE COURT: All right. Now the building they're building out behind, that's not a new courthouse is it?

MR. KUCZYNSKI: No.

THE COURT: You think somebody be thinking…

MR. KUCZYNSKI: The District Court - - the District Court is kind of behind…

THE COURT: Right. Yeah, I've been in there.

MR. KUCZYNSKI: …but it's laid in a separate building.

THE COURT: That was - - that went up while I was

still in practice so.

MR. KUCZYNSKI: Right.

THE COURT: All right, take up some preliminary things. First of all, you're correct, my dismissals were in error. I should not have granted them because they had reque- - Mr. Holder had requested a hearing. And a dispositive dismissal when a hearing is requested is improper. I thought when I first read these, it's probably because of doing this as a senior judge, and I'm doing this on a home computer trying to make sense of the whole thing, and it's - - I can't get it all laid out in front of me. It seemed at first like it was just a reiteration of what I had already dismissed, and that's why I had dismissed it. And then as the motions came in and I read those, I realized, "Wait a minute, I may have misread." And so I went back and re-read and realized that although the underlying facts were the same and what have you, obviously the Town of Keedysville was - - is - - was a new entity into the case and there was a different slant on things. So what I did, and I'm - - this is not only an explanation for you, the attorneys know what I'm doing, but for you not only an explanation for you, but it's to put this on the record ahead of time. Okay? What I did was then notify the Circuit

Court that we needed a hearing on all pending motions, with all - - all the motions of the - - motions to dismiss. And we're going to take up on all of them today just as if I hadn't granted.

I didn't set aside the dismissals because what I didn't want to have happen until we - - after having read everything and - - and gone back and reviewed the history of the case and what happened last time and this time, quite frankly, it takes a long time, sir, because you've never met a motion that you can't turn into 50 pages. So everything takes a long time to - - to read. But having done all that, I figured, okay, I - - what I didn't want was this case to explode. And if I set things aside, things could open up, discovery can open up. I wanted to keep everything calm. So I left all of the dismissals in place, but I'm treating it as a - - as if it hadn't occurred. And what I'm going to do at the end after all the argument is done, I will issue an Opinion as to what I'm going to do with this, as to whether or not the - - the motions are set aside. I mean the dismissals are set aside or whether they stay in place depending upon what I hear today.

All right, so having said that, the motions to set aside the dismissals, I'm treating as moot because

we're having our hearing on the Motions to Dismiss. So that the - - I don't think Mr. Holder and Uncle Eddies has any motions other than to set aside the Motion to Dismiss. Correct?

MR. KLINE: That's correct.

THE COURT: All right.

MR. KLINE: But for Uncle Eddies, that's correct.

THE COURT: Do you have any motions other than the Motion to Set Aside Dismissal?

MR. HOLDER: Yes, Your Honor, I do. The other dispositive - - and just I think we're on the same page that different legal theories for the same transaction is why we're coming back, why you…

THE COURT: Right.

MR. HOLDER: Okay.

THE COURT: Right.

MR. HOLDER: *East versus Gilchrist*?

THE COURT: I missed the last thing you said.

MR. HOLDER: *East* - - *East versus Gilchrist* case.

THE COURT: Oh, no, I'm not talking about cases.

MR. HOLDER: Oh, okay.

THE COURT: But what's your motion?

MR. HOLDER: Oh, okay. So when you denied my Motion for Summary Judgment on the blazed tree with prejudice…

THE COURT: Uh-huh.

MR. HOLDER: It's kind of contrary to rule 2-602(a), which says that you have revisory power at - - at, you know, at number c that over all your orders. So when you say, "Denied with prejudice," it's sort of confusing for me to continue to litigate. That would be dispositive of generally the transaction in this case by denying that with prejudice. So I would like that one to be vacated as well, that decision or at least with pre-…

THE COURT: Are you prepared to argue that motion today?

MR. HOLDER: I was prepared to argue my Motion to Amend. Quite frankly, I - - I feel very prejudiced that you've withheld this - - this gap intentionally, not allowed discovery amendment in my pleadings or anything. With that intention in mind, I had no idea, I showed up here today, honestly, to - - to argue…

THE COURT: All right, so are you asking for a continuance?

MR. HOLDER: Please.

THE COURT: All right. How about Uncle Eddies?

MR. KLINE: I'll join in the continuance because, Your Honor, quite frankly, it's set in for all open motions. The only open motion as the Court had denied

my…

THE COURT: All right.

MR. KLINE: …Motion to Alter or Amend the June matter, all I had was the June ’23 order. I haven’t - - the Court hasn’t - - judiciary case search didn’t note my notice of appearance. All my - - it - - it doesn’t appear. It’s been filed, but it - - for whatever, it doesn’t appear. I haven’t answered because of the dismissal because nothing - - because the case is in a dismissal posture.

THE COURT: Okay.

MR. KLINE: I mean it’s not that I want a continuance, but if - - if there would have been some notice, I would have been happy to argue all the motions today, but I was only here arguing the Motion to Alter or Amend the June ’23, which was the only thing I saw that was pending.

THE COURT: Once again…

MR. KLINE: Frankly.

THE COURT: …that’s one of the problems of being a senior judge coming from another jurisdiction.

MR. KLINE: I - - I’m not…

THE COURT: That that didn’t get communicated to you. I apologize to all of you. I think we’re in a position where I - - I have to grant the continuance

if they're not prepared to argue. I don't know whether you all are prepared to - - to argue the way I had envisioned this.

MR. KARPINSKI: Your Honor, on behalf of the Town of Keedysville, we have a Motion to Dismiss that's unopposed. We didn't request a hearing. So from my perspective…

THE COURT: On the Town of Keedysville?

MR. KARPINSKI: Yeah, the Court…

THE COURT: Okay.

MR. KARPINSKI: The Court could have ruled on that at any time.

THE COURT: All right. And that - - that - - all right.

MR. KLINE: Your - - Your Honor, if I may? That motion, and counsel can correct me, was filed on June 20, 2023. Correct, counsel?

MR. KARPINSKI: That's correct.

MR. KLINE: Okay. That was after the June 14th Order three days before the dismissal of the whole case. This case has been - - if you go on judiciary case search, this case is postured as dismissed. The - - his - - his argument that the Motion to Dismiss, and I don't know whether it impacts Uncle Eddies at all, but for preservation of the record, given the

timing of his motion, I'm not saying he cannot file it. That's not what I'm saying at all. But it occurs in the gap period between June 14th, June 23. The case is in a dismiss posture where the - - where if I would have filed an answer, a counterclaim, a third-party claim or anything would not have been taken up.

THE COURT: All right, here's what I'm going to do, first of all, I will - - I'm going to do two things. I'm going to set aside the dismissals today so that there's no confusion. Secondly, someone will present an order to stay all proceedings pending our hearing. I'm going to continue the hearing today because it's fundamentally unfair to require you to argue a motion that you're not prepared to argue. I apologize to you, gentlemen, because well I guess if I had been from this jurisdiction, the word would have gotten to you that, "Okay, this is what we're doing." But I - - I know I had conveyed that, but I didn't - - it didn't get down the line to where it needed to. I knew what I had in my mind, I was coming here to hear and decide the whole matter. But we'll just have to reset this.

MR. HOLDER: Your Honor?

THE COURT: Yes.

MR. HOLDER: Well first off, thank you very much.

I - - I don't find any fault that - - I mean we're all men. We make…

THE COURT: Well I accept it. It was my fault that I misread it the first time.

MR. HOLDER: Well I appreciate - - I - - I - - and sometimes I'm a little direct in the court. So I don't mean anything when I say things either. Okay?

THE COURT: I appreciate directness.

MR. HOLDER: Well then you'll like me as we get to know each other.

(Laughter).

MR. HOLDER: So the only - - the only thing I have about your order, you mentioned to stay. And…

THE COURT: Mm-hm.

MR. HOLDER: …I have a - - I have a problem with the ripeness of the orders because if you stay it, and I can't get all of the Defendants to answer or some of them get dismissed, and then say I litigate…

THE COURT: No, no, no.

MR. HOLDER: …with one…

THE COURT: I'm staying in terms of - - of discovery and that type of thing. If anybody needs to file an answer based upon the dismissal, anything along those lines, if anybody needs to renter their appearance, okay, then that needs to get done. It's

I'm not staying it for that purpose. It's what I'm trying to do is until we get the legal posture of this matter resolved, we're not gonna off on tangents and - - and cost everybody tons of time and money. That - - that can happen if you win your motion. If you don't, then - - then it doesn't - - then you figure out where you go.

MR. KARPINSKI: In that same vein, Your Honor, I assume the Defendants don't need to refile their motions. The clock will start ticking today for the Plaintiff to respond of the pending motions.

THE COURT: You - - you willing to accept that?

MR. KLINE: That's actually what I was going to address or hope that the order would address, which is they do not - - they do not need to refile their motions. But I would appreciate the order would indicate a timeline for Uncle Eddies, specifically directed at me, I have let's say 15 days to respond to the motion.

THE COURT: I'm going to say close of business. Can you do - - I'm kidding.

MR. KLINE: Understood. I wasn't…

THE COURT: No, I - - I - - regular timeline for a motion, 15 days.

MR. KLINE: From - - from the date of the signing

of the order? I'm just looking for when the clock starts.

THE COURT: I…

MR. KLINE: Because everyone's gonna watch.

THE COURT: I'd start it today.

MR. KLINE: And that's fine, Your Honor. I'm just looking for direction from the Court…

THE COURT: Right.

MR. KLINE: …so I am not untimely.

THE COURT: And do you understand what I'm saying?

MR. HOLDER: Okay, so we're gonna start the time today just as if we have basically June 26 to now, that's gone. We start the clock from June 26 on response or June 20th…

THE COURT: No, we're starting the clock from today.

MR. KLINE: From today.

THE COURT: If - - if an answer needs to be filed by anybody, you have 15 days to do it.

MR. HOLDER: Everything's 15 days?

THE COURT: Yeah.

MR. KLINE: Yes, from today.

THE COURT: If it's a motion.

MR. HOLDER: Okay, I have one more Defendant I need to serve I haven't served yet. And I have to

renew a summons to get that served. I'd like to have some more time.

THE COURT: All right, well that's - - that's - - that's a totally different issue because you're - - you're able to do that. I'm only staying discovery.

MR. HOLDER: Okay, that's fine. That's - - that's all I need to know.

THE COURT: Okay.

MR. HOLDER: Thank you.

MR. STEELE: So, Your Honor, so I'm clear, the stay then would not cover - - Uncle Eddies has not filed an answer, and Uncle Eddies has made it clear through counsel that it intends to file cross-claims against all these people who have pending motions. That puts us back in the whole the case is starting to explode again posture. Uncle Eddies being Mr. Holder's LLC.

THE COURT: Well the - - he did not in his pleading say he was gonna do it, maybe he told you that. He said he may need to.

MR. STEELE: Okay, Your Honor.

THE COURT: You intend to do that?

MR. KLINE: Frankly, yes.

THE COURT: Okay. Let me ask you a question.

MR. KLINE: Yes, sir.

THE COURT: My under- see if I'm right, is Uncle Eddies - - I know it may have had other purposes when it was formed, but right now it's a holding company for real estate.

MR. KLINE: Yes, as any legitimate purpose within the laws of the State of Maryland, yes.

THE COURT: Right, okay. And that real estate is held totally in the name of Mr. Holder and/or his wife?

MR. KLINE: That may be incorrect.

THE COURT: Tell me what it is.

MR. KLINE: Uncle Eddies does own land, I believe…

THE COURT: Okay, it owns land.

MR. KLINE: …in its own name.

THE COURT: Okay.

MR. KLINE: And I don't want…

THE COURT: All right, who owns Uncle Eddies?

MR. KLINE: Members disclosed through the - - it's an out-of-state LLC registered in Nevada, I believe. Excuse me?

MR. HOLDER: New Mexico.

MR. KLINE: New Mexico, excuse me.

THE COURT: That doesn't answer my question though does it?

MR. KLINE: I don't know what the - - with all due

respect to the Court, whoever owns Uncle Eddies - - if Uncle Eddies LLC is an appropriate Maryland LLC…

THE COURT: Counsel…

MR. KLINE: Yes, sir.

THE COURT: I'm going to ask you one more time.

MR. KLINE: Yes, sir.

THE COURT: Who owns Uncle Eddies?

MR. KLINE: I believe it's owned either by Mr. Holder, Mrs. Holder, the two, or it's been trusted to their children.

MR. HOLDER: Three.

MR. KLINE: Excuse me?

MR. KLINE: Number three?

MR. HOLDER: Mm-hm.

MR. KLINE: It's been trusted to their children, Your Honor.

THE COURT: When would that occur? Because that did not come up at the last hearing.

MR. HOLDER: June 1st, 2019.

THE COURT: Okay.

MR. KARPINSKI: Well, Your Honor, respectfully, and I don't know counsel, I - - I think this raises a serious ethical issue. I mean the - - the Plaintiff is suing basically himself and then has counsel. It's ironic where we're all sitting here. And - - and…

THE COURT: That's where I was going, counsel.
MR. KARPINSKI: Yes.
THE COURT: Is that…
MR. HOLDER: Your Honor, if I…
MR. KLINE: No.
THE COURT: And a potential 1-341 against Uncle Eddies if they do file, and it's incorrect for them to have filed. I'm not saying it's incorrect. I'm not ruling at this time. I'm willing - - I'm keeping an open mind until I hear everybody.
MR. KLINE: The Court asked the question…
THE COURT: I did.
MR. KLINE: …based upon counsel's question, asked me as a…
THE COURT: If you were gonna file, and…
MR. KLINE: …as an officer of the bar.
THE COURT: …you said, yeah, you were.
MR. KLINE: And I said, "Frankly, I believe -," I said, "Yes." And that's…
THE COURT: It puts you at risk, yeah. You know.
MR. KLINE: I understand. It puts any attorney that files anything at risk under 1-341. I understand all that. I was trying to answer the Court's question, and I did so. I realize that if I file something, and they find something wrong with it, they

are able to file…

THE COURT: All it…

MR. KLINE: …whatever…

THE COURT: It's - - it's a little different from - - than that. So I'm going to leave it up to you. We've had our discussion.

MR. KLINE: Yes, sir.

THE COURT: All right, you all will be contacted by the Clerk's Office. There's not much we can do. Who's going to prepare the order?

MR. STEELE: All right, so the - - the order sets aside the dismissals.

THE COURT: Yes.

MR. STEELE: Stays everything with regard to discovery.

THE COURT: Yes. Starts the clock as of today for filings.

MR. STEELE: Starts the clock 9-28 for filings. And is the - - the rescheduling is part of this order? Or that's just something the…

THE COURT: No, that's - - Assignment Office has to do that.

MR. STEELE: Okay.

THE COURT: All right, anything else? Yes, sir?

MR. HOLDER: One thing, Your Honor. It's been - -

I've been challenged by Mr. Steele on my good faith basis to file suit against Uncle Eddies, and I think I'd like to just address that quickly.

THE COURT: No, not today.

MR. HOLDER: Uh…

THE COURT: Not today, sir.

MR. HOLDER: Okay. It's - - it's in the law, but…

THE COURT: It wasn't - - because no challenge to your good faith was raised today.

MR. HOLDER: You just mentioned a 1-341.

THE COURT: It wasn't directed at you, Mr. Holder.

MR. HOLDER: All right. I appreciate that then.

MR. ESTES: Your Honor, if I may, just briefly.

THE COURT: Uh-huh.

MR. ESTES: Two issues…

THE COURT: Two - - I couldn't hear you.

MR. ESTES: I have two issues, Your Honor, just that I'd like to make the Court aware of and perhaps request. Case 430, which is intimately involved in this litigation perhaps, is now set in the appellate court of Maryland. Judgment on Mr. Holder and Mr. - - and Uncle Eddies appeal in that matter is set without oral argument for sometime in November. So insofar as that affects the scheduling coming forward or going forward, I don't know if it does or not, but I just

wanted to…

THE COURT: 430 is that the trial that was in front of Judge Wilkinson?

MR. ESTES: That's correct.

THE COURT: Okay.

MR. ESTES: That's correct.

THE COURT: All right.

MR. ESTES: And the companion case, case 420 has been resolved by the appellate court and affirmed, I believe, in almost all parts. And so the second part of - - of what I'd like the Court to become aware of is, and maybe it's a request and maybe this is the wrong time to make it, but I'd like the Court to - - to take judicial notice, if it may and - - and is so disposed, to the entire record in case 430, the entire case in the 420 case as well as any other pending matters in which Uncle Eddies and - - and Mr. Kline are involved in here in Washington County, Maryland.

THE COURT: Well I'll tell you, you are correct, this is not the time to…

MR. ESTES: Very well.

THE COURT: …request that.

MR. ESTES: Very well.

THE COURT: But I think that would be appropriate to bring up during argument.

MR. ESTES: Very well.

THE COURT: All right? Anything else?

MR. KARPINSKI: No, Your Honor.

MR. STEELE: No, Your Honor.

THE COURT: All right, thank you all.

MR. KARPINSKI: Thank you, Your Honor.

MR. STEELE: Thank you.

(Whereupon this matter was adjourned at 9:54 a.m.)

OoO

√ Digitally signed by Dee Barnhart

DIGITALLY SIGNED CERTIFICATE

I HEREBY CERTIFY that I reported verbatim by electronic device the proceedings in the matter of **Justin Holder versus Benjamin Estes, et al., Case No. C-21-CV-23-000036,** in the Circuit Court for Washington County, on September 28, 2023, before the Honorable William R. Nicklas, Jr.

I further certify that the proceedings were transcribed by me to the best of my ability in a complete and accurate manner, and page numbers 1 through 24 constitute the official transcript of the proceedings. In witness whereof, I have affixed my signature this 11th day of October, 2023.

Dee Barnhart
Court Reporter

IN THE CIRCUIT COURT FOR WASHINGTON COUNTY, MARYLAND

JUSTIN K. HOLDER,	*	
Plaintiff	*	
vs.	*	**CASE NO. C-21-CV-23-000036**
FREDERIC M. FREDERICK, et al.,	*	
Defendants	*	

****

TRANSCRIPT OF PROCEEDINGS
(Motions Hearing)

March 8, 2024
Circuit Court – Hagerstown, Maryland
Courtroom No. 5

The above-entitled matter came on for hearing

Before:

The Honorable William R. Nicklas, Jr., Associate Judge

Appearances:

Justin K. Holder, pro se, on behalf of the Plaintiff

James P. Steele, Esq., on behalf of Defendants Frederic M. Frederick and Frederick Siebert and Associates

Michael B. Rynd, Esq., and Edward L. Kuczynski, Esq., on behalf of Defendant Town of Keedysville

Benjamin Estes, Esq., on behalf of Defendants Benjamin Estes and Lisa Estes

Transcribed from electronic recording by:

Dee Barnhart, Court Reporter
Circuit Court for Washington County, Maryland
24 Summit Avenue
Hagerstown, MD 21740
(240) 313-2554

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OoO

P R O C E E D I N G S

(Whereupon this matter commenced at 9:42 a. m.)

THE COURT: Good morning. Please be seated.

PARTIES IN UNISON: Good morning, Your Honor.

THE COURT: Give me a moment to get the computer up. It will obviously be a little bit more than a minute. The message is, "This might take several minutes." I apologize. All right, Holder versus Estes, et al., 23-36. Stand and state your name, sir.

MR. HOLDER: Okay, Justin Holder, Plaintiff.

THE COURT: Good morning, sir.

MR. HOLDER: Good morning, sir.

MR. STEELE: Good morning, Your Honor. James Steele on behalf of Defendants, Frederic Mark Frederick and Frederick Siebert and Associates.

THE COURT: Good morning, sir.

MR. RYND: Good morning, Your Honor. Michael Rynd on behalf of the Mayor and Town Council and the Town of Keedysville.

THE COURT: Good morning, sir.

MR. KUCZYNSKI: Edward Kuczynski. I'm co-counsel with Mr. Rynd.

THE COURT: Good morning.

MR. ESTES: Benjamin Estes, representing myself as well as my wife, Lisa Estes.

THE COURT: Good morning. Okay, you can have a seat.

MR. KUCZYNSKI: Your Honor, I'm here on behalf of the Town of Keedysville.

THE COURT: You're what? I'm sorry.

MR. KUCZYNSKI: The Town of Keedysville, but I'm co-counsel with Mr. Rynd.

THE COURT: Right. All right, just a little couple housekeeping. I believe when we were here last, I had withdrawn the dismissals that - - of everything that I had signed subsequent to our last hearing. Is that your all's understanding?

MR. STEELE: My understanding, Your Honor, is that you had set aside the dismissals.

THE COURT: Right.

MR. STEELE: Pursuant to the dispositive motions by the Defendants.

THE COURT: Correct.

MR. STEELE: But that you did not set aside any other order that had…

THE COURT: No, no.

MR. STEELE: …been issued.

THE COURT: That's what I…

MR. STEELE: Correct.

THE COURT: You said it correctly. All right,

because I - - a hearing had been requested, and I had misread, I think I had said that last time, and you were entitled to a hearing. So I put you back in the position that you were in.

MR. HOLDER: The only - - the only difference I would have, I - - I thought that you had set aside all of the motions where I had asked for a hearing that were dispositive of the claim. And there was a summary judgment that was denied with prejudice. I think there may be a little bit of argument from Mr. Steele as to what Rule 602(a) actually means on that and what really denying a claim would - - or denying a motion with prejudice would be if it's dispositive the claim if I would be entitled to a hearing under 311 (f). I think I would be to the extent dispositive of a claim. And that…

THE COURT: All right, which summary judgment? This is your summary judgment you're talking about?

MR. HOLDER: This would have been summary judgment I filed. And then Frederick and FSA, Mr. Steele wrote the motion. He opposed - - he asked in his order that - - that you deny it with prejudice. I was asked for summary judgment that displays through these public records didn't exist. These - - these prior deeds didn't exist. It's pretty much the, you know, the

ultimate decision of fact I'm looking for here in this case. So if you were to deny that with prejudice, it would put me in a position that that is dispositive of…

THE COURT: I understand.

MR. HOLDER: Okay.

THE COURT: I understand, okay.

MR. STEELE: Your Honor, Mr. Holder filed two different summary judgment motions. The first one was before the April 2023 hearing.

THE COURT: Right.

MR. STEELE: And that was styled as an omnibus summary judgment and consolidate.

THE COURT: I remember that one.

MR. STEELE: The way I read the law, that got mooted when Your…

THE COURT: Right.

MR. STEELE: Your Honor dismissed the entire Complaint.

THE COURT: The first one's gone.

MR. STEELE: Right.

THE COURT: Right, right.

MR. HOLDER: Understood.

MR. STEELE: Then after the - - I think if I have my timeline right, after the First Amended Complaint,

he filed a Motion for Summary Judgment Blazed Tree and Possession Fence.

THE COURT: Okay.

MR. STEELE: Which we opposed. The Court denied it with prejudice. And as I understand it, that was not set aside. And in fact, Your Honor, I'm the one who - - by the parties' agreement, I submitted the proposed order, and I asked Your Honor a couple of times at that hearing specifically, "What is it that this order's doing?" "And I'm setting aside the dismissals." It was staying discovery, and it was starting the clock on…

THE COURT: Well even if I were to set it aside, isn't it moot anyway?

MR. STEELE: Yes.

THE COURT: Because of the Second Amended Complaint moots it.

MR. STEELE: Correct, Your Honor.

THE COURT: Right. So that's what I'm going to do.

MR. STEELE: Okay.

THE COURT: I'm going to set it aside and moot it because it's not…

MR. HOLDER: Okay, good.

THE COURT: …something that comes out at this

point. If - - if you ultimately are successful, then you can file another motion if you think it's appropriate. If you're not successful, then you have, you know, whatever choices you have.

MR. HOLDER: Right, understood.

THE COURT: Right? Okay.

MR. HOLDER: Yeah, understood. I appreciate that, Your Honor.

THE COURT: All right. So now counsel for Uncle Eddies did strange things. He filed a line withdrawing motions to dismiss, stating he was not to be here. He doesn't - - he doesn't have to be here. But then he also filed asking to stay, which I took to mean his Motion to Dismiss, which was denied.

MR. STEELE: Your Honor, my understanding of that is he filed a motion - - a motion to dismiss it. I'll put it in air quotes, which basically said, "Mr. Holder's right. I'm not really asking a dismissal. I'm asking that the Court allow Mr. Holder to step in Uncle Eddies' shoes." And Mr. Holder's, air quotes, opposition was, "Yeah, Uncle Eddies is right. I should be able to step in their shoes." That's what was pending.

THE COURT: Well isn't that what we found last time is that they're an alter ego?

MR. STEELE: Well, Your Honor…

THE COURT: Which is - - which is kind of interesting because isn't that an issue on appeal?

MR. STEELE: Well I'm not even - - I'm not a - - I'm not a party to that appeal.

THE COURT: Right.

MR. STEELE: I'm not even sure that the issue of alter ego is on appeal. What we decided in the last couple of hearings, what the Court I think decided, Mr. Holder argued he - - that he - - he was the alter ego of Uncle Eddies.

THE COURT: Is the owner, yeah.

MR. STEELE: Right. Well…

THE COURT: Well I hear you, yeah.

MR. STEELE: He - - he - - he argued unsuccessfully on standing grounds that he was the alter ego. And this Court, I believe if you look at the transcript at the April 2023 hearing, the thing he cited was an order saying, "This - - this alter ego shows that Mr. Holder is not using this property for his own personal benefit alone." So…

THE COURT: Because…

MR. STEELE: …our position is - - my client's position is he - - Mr. Holder is using Uncle Eddies when it suits his purposes as his own thing, but it's

still a LLC. It still would need a lawyer in this court…

THE COURT: Mm-hm.

MR. STEELE: …to represent their interest.

THE COURT: Sure. They have to.

MR. STEELE: Right.

THE COURT: You can't do it without a lawyer.

MR. STEELE: So…

THE COURT: And Mr. Holder doesn't own the property that we're talking about.

MR. STEELE: Well…

THE COURT: Right?

MR. STEELE: …that's - - I'd like to get to that in a second, Your Honor.

THE COURT: Okay.

MR. STEELE: But my concern is Mr. Holder has made it clear he desperately wants to step into Uncle Eddies' shoes. And if we say…

THE COURT: Well we're not doing that today.

MR. STEELE: Okay. But if we say, "Alter ego," that's the shoehorn he's using to say and that allows him in theory to bring back the fraudulent concealment that has been dismissed with prejudice. That is ultimately I believe what Mr. Holder's goal is.

THE COURT: Okay.

MR. STEELE: With respect to the ownership, I filed a line…

THE COURT: We couldn't possibly do that today without Uncle Eddies being here.

MR. STEELE: Correct.

THE COURT: All right.

MR. STEELE: Correct. With respect to ownership, Your Honor, I filed a line because in the September 2023 hearing and the April 2023 hearing, neither Mr. Holder or in the September one, Mr. Kline, gave a clear answer to this Court about who owns Uncle Eddies, what is Uncle Eddies.

THE COURT: Right.

MR. STEELE: The same thing, it's an exhibit to the line, the same - - Mr. Kline and Mr. Holder did not give a clear answer to Judge Wilkinson. What we know is Mr. Holder is - - is Uncle Eddies' resident agent. He's the manager. He's an agent for the manager, some other things. One thing that he has never said is that he is an owner, that he was a member. And I would like this - - it's not up to me to ask him, but I would like this Court to ask him point blank, "Are you now a member of Uncle Eddies and have you ever been a member of Uncle Eddies?"

THE COURT: I don't think I can do that today

because it's not before me.

MR. STEELE: Okay.

THE COURT: You know? And if it was before me, I would do it in a heartbeat, but it's not.

MR. STEELE: Okay.

THE COURT: It's all withdrawn. Because ultimately what's going to happen today, either he'll be successful, you all won't be, and so the case will go on. Or you all are successful, and if you all are successful, the only thing that's left in the case is your suit against Uncle Eddies.

MR. HOLDER: Right.

MR. STEELE: And, Your Honor, that sets this Court up - - because as - - and I believe this is before the Court because I've incorporated - - as Your Honor said in September, you didn't want the case to explode. And, unfortunately, the case has exploded through no fault of my clients or anybody at this table. But the claim by Mr. Holder against Uncle Eddies is on its face it's trumpeting loud bad faith and collusive litigation. Mr. Holder is telling…

THE COURT: Well I don't want to get into that. Here - - here's - - what I want to do is this, there are motions to dismiss from the three main defense groups. Correct? All right.

MR. STEELE: Yes.

THE COURT: I want to - - all of which although there are some differences in your arguments from your respective positions, they're - - they're all essentially the same. So we're gonna take those up.

MR. STEELE: Okay.

THE COURT: The - - you filed a line regarding bad faith, collusive litigation, but there was also a Petition for Injunctive Relief.

MR. STEELE: That's correct, Your Honor.

THE COURT: I don't think the Court can do anything with a line.

MR. STEELE: Right.

THE COURT: Because it's not a motion.

MR. STEELE: And I…

THE COURT: Right.

MR. STEELE: Right. And I have not yet adopted that as the substance of a - - an affirmative motion.

THE COURT: I understand. But then - - but the injunctive relief, we don't get to unless you're successful. If you are successful, then we would take that up because really what you're asking for is a gatekeeper.

MR. STEELE: Correct, Your Honor.

THE COURT: All right, so and does everyone agree

that that's the procedural posture of this case?

MR. HOLDER: Oh, no, well I would - - I would say that we came to court on April 25th. You declared the rights and status of parties, who has contractual privity, who has a tort duty. You made a declaration that I don't have privity with Frederick, therefore, I have no standing. So I have privity with Uncle Eddie. I have standing. I retargeted my claim. Then we have an appeal that happens in Mr. Estes' brief, an appeal on alter ego. We come into court, and they say maybe there is some privity. There's some collusive here, maybe not that intimate nexus.

THE COURT: Well I'm not - - I'm not arguing collusion right now.

MR. HOLDER: Right. Well I'm - - I'm - - that's - - so I amend to the second. I amended to - - to try to give Your Honor the facts so you can make the declarations of the rights, status and party. If you're going to get rid of this on summary judgment today, for example…

THE COURT: No, no. There's no summary judgment before me today.

MR. STEELE: Your Honor, there - - my client has a Motion to Dismiss or in the Alternative…

THE COURT: Oh, in the alternative.

MR. STEELE: …for Summary Judgment.

THE COURT: Correct. I - - I'm sorry. I treated them all that way as dismissals so.

MR. HOLDER: Yeah, I mean we can't dismiss with declaratory judgment out here, and we have the necessary parties to make them. They have - - he clearly has an interest in what's being litigated. If they don't want to come to court and avail themselves, that's - - that's their choice.

THE COURT: Who are you talking about now?

MR. HOLDER: Mr. - - well all the Defend- I'm sorry, I should - - all the Defendants, if they don't - - if they don't want to come avail themselves of what's being litigated between me and Uncle Eddies, that's their choice. But we have the necessary parties here and, you know, I usually…

THE COURT: Necessary parties to litigate Uncle Eddies?

MR. HOLDER: To litigate the declaratory judgment of rights and status of…

THE COURT: No, we're not…

MR. HOLDER: …these contracts.

THE COURT: That's not what today is. Today is a - - is a motions hearing.

MR. HOLDER: Okay.

THE COURT: And a motions hearing only.

MR. HOLDER: Okay.

THE COURT: All right?

MR. HOLDER: All right. Then, yeah, I - - I guess unless…

THE COURT: All right.

MR. HOLDER: If he's asking for a permanent injunction, I'm asking for a trial. If he's asking just for a gatekeeper for this particular case, you probably have the power to grant that.

THE COURT: I certainly have the power to grant it. I'm not saying I'm going to until I get to the end of this.

MR. HOLDER: Right.

THE COURT: All right?

MR. STEELE: And - - and so, Your Honor, so we're clear, I did not know whether the Court was going to get to the Petition for Screening Order/Vexatious Litigant Declaration today. We could very well come to a resolution of the pending motions that are here, and I don't know if we could argue the - - the Petition today or set it aside for a future date. If that's the case…

THE COURT: You're talking about for the Petition for Injunctive Relief?

MR. STEELE: Right. My Petition to - - to declare him a vexatious litigant and for a pre- prefiling injunction/screening order.

THE COURT: Well that's gonna - - let's take…

MR. STEELE: Right.

THE COURT: …up the…

MR. STEELE: Right.

THE COURT: …substantive motions first.

MR. STEELE: Right.

THE COURT: We'll decide what we're gonna do with the other one when we're done. Okay?

MR. STEELE: Okay.

THE COURT: All right, now…

MR. HOLDER: One - - one more matter is…

THE COURT: Yeah.

MR. HOLDER: …at 1 o'clock, me and Mr. Rynd and Kuczynski have a scheduling conference in Courtroom 2. It should only be a few minutes. Don't know that we're gonna go that long.

THE COURT: Well I would be very much hopeful that we'd be done by then.

MR. HOLDER: Me too.

THE COURT: But if we're not, we will certainly - - I'm not going to stand in your way. You'll go where you need to be, and we'll pick it up when you come

back.

MR. RYND: Thank you, Your Honor.

MR. HOLDER: Thank you, Your Honor.

THE COURT: Sure.

MR. ESTES: Your Honor, if I may just briefly. Regarding the motion to the actions of Uncle Eddies in this case, I think you had mentioned at the very beginning, excuse me, I'll speak up. I probably don't speak loudly. But…

THE COURT: Yeah, and I don't understand that because you are a lawyer.

MR. ESTES: Well, yeah, true. There is that better?

THE COURT: Yeah, that's fine.

MR. ESTES: Thank you. What - - I guess my concern is that Uncle Eddies asked to have the case reopened because I think they wanted to file counterclaims against us and demanded that there be a hearing before anything was dismissed. Then they got in, and they couldn't tell the Court who Uncle Eddies was, who the owners really were. They sat at Mr. Holder's table and they conversed. Then they filed a - - a number of other motions to dismiss, I think, after they had asked the case to be reopened. Then they asked the case to be dismissed. But it seems as

though the case was already closed against them. And…

THE COURT: I don't think the case was ever closed against them.

MR. ESTES: Well the case…

THE COURT: Not to my memory.

MR. ESTES: The case was - - okay, so they asked the Court to - - to reopen the case. Right? And - - and then they filed a bunch of motions, and then they just withdraw the motions. And if they've withdrawn all their motions, their answer was probably due, my guess, would be within 30 days after Mr. Holder filed his Complaint. My concern if - - if I just may, if I may, my concern is - - is that this is collusive litigation. That what Mr. Holder is trying to do…

THE COURT: You want to argue that, and I'm not taking arguments on that right now.

MR. ESTES: Very well. No, I just wanted to voice my concern that…

THE COURT: I understand. There's gonna be a time, there may be a time when that's appropriate, but it's not now.

MR. ESTES: Very well, thank you.

THE COURT: All right, now what I would suggest is that I'll take argument from each group, and then you can address them all. Okay?

MR. KUCZYNSKI: Thank you.

THE COURT: Who goes first? It doesn't matter to me.

MR. STEELE: Your Honor, I'll go first.

THE COURT: All right.

MR. STEELE: Again, James Steele on behalf of Frederic Mark Frederick and Frederick Siebert and Associates. To - - to try to put this what's before the Court right now in context, Mr. Holder filed an original Complaint that had nine counts against my clients and I believe Mr. Estes. At the April 2023 hearing, this Court dismissed seven of the nine counts with prejudice on standing grounds. This Court denied two of the nine counts without prejudice on the grounds of…

THE COURT: Dismissed two without prejudice.

MR. STEELE: Dismissed without prejudice.

THE COURT: Right.

MR. STEELE: On the grounds of improper pleading. So Mr. Holder was allowed 30 days, something like that, to file an amended complaint as to those two counts. Mr. Holder filed an Amended Complaint but and - - and one of the two counts was tortious interference with business prospect. Frankly, I forget the other one because he didn't - - when he

filed his Amended Complaint, he didn't include that second count. It might have been intentional infliction of emotional distress. I don't remember off the top of my head. In any event, tortious interference with business prospect was - - and it was - - it went from nine counts in the original Complaint to only three counts. And only that one in theory was against my clients. Mr. Holder then - - and - - and my clients filed Motion to Dismiss or for Summary Judgment. And - - and the other Defendants filed their dispositive motions, and then Mr. Holder filed a Second Amended Complaint. And my clients filed yet another Motion to Dismiss or for Summary Judgment incorporating all the arguments from the previous dispositive motions. But what we have here now is a three-count Complaint. The third one is breach of contract against Keedysville. The second count is this tortious interference with business prospect. He - - he - - he has it - - let me see, how did he characterize it? "Tortious Interference with Contract, Business Relations and/or Prospective Advantage," that's count two. Count one, he styles as, "Indemnity for Article 19 Damages Related to Fraudulent Concealment, Deceit and/or Intentional Misrepresentation." And it's not clear, but he's - -

his argument in that case is that Uncle Eddies fraudulently concealed things from him. Mr. Holder, the Plaintiff, says that Uncle Eddies, which he is the only human being other than Mr. Kline connected with Uncle Eddies, but Uncle Eddies fueled by Mr. Holder somehow fraudulently concealed from Mr. Holder this deed overlap and the boundary line that - - that he disagrees with that has already been decided, litigated and decided against him in case 430. He says Uncle Eddies through its agents, Frederick, etcetera, etcetera, count one in essence is still just the fraudulent concealment count that this Court dismissed with prejudice. Mr. Holder won't take no for answer. He's - - he's gussied it up in different language, but it what it boils down to is he still says my clients fraudulently concealed from him a deed overlap that doesn't exist and this boundary that a court has already accepted the boundary is where my client said it was.

THE COURT: He's saying that your client did that, concealed it from him?

MR. STEELE: As - - as the way he puts it is Uncle Eddies by and through its agent, Frederick, is the one that concealed it from him. But what it all boils down to, I mean, Your Honor, exactly…

THE COURT: Wait a minute. How - - how are you an agent of Uncle Eddies?

MR. STEELE: I'm not, Your Honor. But that - - this…

THE COURT: You were an independent contractor weren't you?

MR. STEELE: Yes, Your Honor. This is all part and parcel of my ultimate complaint that he's trying to use Uncle Eddies to get back to - - to - - if he can - - he thinks he can step into Uncle Eddies' shoes and bring a fraudulent concealment claim that he personally has - - it's been dismissed against him with prejudice. Let me just…

THE COURT: I'm - - I'm still - - who owns the property?

MR. STEELE: Well that's an excellent question, Your Honor.

THE COURT: Well thanks.

MR. STEELE: Because if - - because…

THE COURT: I - - I get lucky once in a while.

MR. STEELE: Because I went back a couple of days ago, so in the original Complaint, Mr. Holder never actually said what property he owned and what property Uncle Eddies owned. Now we're on the second Amended Complaint. He - - in paragraph 1, he talks about

where he receives his mail. He pays property taxes for the land that he occupies and possesses, etcetera, etcetera. But he doesn't say - - he holds a bare license to lawfully occupy. He doesn't say what property he owns.

THE COURT: So he doesn't say he owns the - - this property.

MR. STEELE: Correct.

THE COURT: So how does he have standing?

MR. STEELE: Exactly, Your Honor. That's what we argued in the first one. We've incorporated that by reference into this motion that he lacks standing in this one. He doesn't say what property Uncle Eddies owns either. That's in paragraph 6. He just says that they own real property, but he doesn't identify it. He doesn't say what property Deena Holder owns, who I understand is a Defendant in this case, who has never been served.

THE COURT: Who's that?

MR. STEELE: Deena Holder, his - - his wife. I'm not sure what the…

THE COURT: Okay.

MR. STEELE: It's none of my business. I don't know what the…

THE COURT: I thought she was - - well when we

were here last April, she had been served with that because I recall clearly at the end saying the only two Defendants left in the case were Uncle Eddies and his wife.

MR. STEELE: Okay, Your Honor. I mean I'm - - it's not my case to prosecute.

THE COURT: Right.

MR. STEELE: I don't know - - I've never seen an answer. I've never seen - - and - - and I would think a rush to get a default judgment would - - would bring us back to the whole collusive litigation aspect of it all. But to your point, Your Honor, he still doesn't tell you who owns what property. He - - he has never said - - he said all sorts of - - of his roles with Uncle Eddies, but he has never said, "I am a member of Uncle -," even if he was a member of Uncle Eddies, it - - he wouldn't own the property, Uncle Eddies would, and he still would not have standing. So that's - - that is a second reason why, and I feel a little ridiculous, Your Honor, arguing dismissal or summary judgment on a count that it's not clear is really against my client. But that's a function of the way Mr. Holder drafted this - - drafts his pleadings.

THE COURT: How do you take…

MR. STEELE: It's not clear.

THE COURT: You can't take that chance not to oppose it.

MR. STEELE: Right. So - - so, Your Honor, so my point is we still don't know what property he owns, what property Uncle Eddies owns. It still goes back to his lack of standing. To the extent the fraudulent concealment in count one is a - - I mean I would argue it - - it's a - - it's a nullity because it's been dismissed with prejudice as to my clients. But I would argue to the extent the Court would consider the merits of it, he still lacks standing. If you, you know, if you go to - - if you go to…

THE COURT: Has he pled facts sufficient to sustain the cause of action?

MR. STEELE: It's the same facts he pled in the original Complaint that…

THE COURT: Right.

MR. STEELE: And in the - - in the ad damnum for count one, he asks - - here's another thing, none of these three counts are on their face for declaratory judgment or for injunctive relief, but the ad damnum for count one, paragraphs A through H, actually A through I, all ask this Court to enjoin parties to do things. The only one as to my client is paragraph H where Mr. Holder asked the Court to enjoin Defendants

Frederick and Estes to indemnify Plaintiff for his actual cost and damages. Again, this is this fraudulent concealment, frankly, gibberish count. So he's asking the Court to indemnify him for his actual cost and damages related to a breach of contract.

THE COURT: Through an injunction.

MR. STEELE: Well through injunction. He's asking to enjoin us to have to pay him for a breach of contract. Again, that was decided in…

THE COURT: I have never seen something pled like that.

MR. STEELE: Right. I have not either, Your Honor. It continues though, "Or damages related to their representations." I don't know what that means either. I would say to the extent count one counts against my clients, the Court has to dismiss it.

The - - so now we go to - - hold on, Your Honor. And just before I go onto count two, which theoretically is the only one really against my client, that to remind the Court in our Motion to Dismiss the Second Amended Complaint, we incorporated and reasserted the arguments concerning, you know, Mr. Holder asked for legal fees, which the Court struck in April of 2023 because he's not a lawyer. We incorporated our argument failure to comply with

pleading standards. We incorporated our argument that Mr. Holder lacks standing to assert the claim. We incorporated our argument that his - - Mr. Holder's claims are barred by the statute of limitations. We incorporated our…

THE COURT: Can you hold on one second?

MR. STEELE: Sure, sorry.

THE COURT: Do you have a post-it note?

COURT REPORTER: Your Honor, I'll get some.

THE COURT: I appreciate it. Thank you. Back up if you would just a little bit with what you were saying.

MR. STEELE: Sure.

THE COURT: Because I was trying to mark something.

MR. STEELE: Okay. So, again, it's - - it's a weird posture. There's an original Complaint, original Motion to Dismiss or for Summary Judgment. And the Court grants that in its entirety but allows Mr. Holder to fix problems with his pleading, how he pleaded certain counts. He only brings back one that the Court had talked about. He still tried…

THE COURT: Which is count one of this…

MR. STEELE: Which - - which is count two of this one.

THE COURT: Okay, two.

MR. STEELE: The - - I'm - - I'm calling it tortious interference with business prospects. I read how he phrased it.

THE COURT: Interference with contract, business rights and/or…

MR. STEELE: Yeah.

THE COURT: …prospective advantage.

MR. STEELE: Correct. So - - so if, Your Honor, it you want me to start again, all of - - because we had to - - he files an Amended Complaint, and we move to dismiss or for summary judgment. And in the course of that, we incorporated the arguments from our original motion. Then he files a Second Amended Complaint, and we incorporate the arguments from both of the original ones and make further argument. So…

THE COURT: So does the Second Amended Complaint cure the problem from last time?

MR. STEELE: I argue it does not, Your Honor.

THE COURT: Tell me why.

MR. STEELE: Because well first, first of all, there's still no - - the standing argument is it's not clear, you know, he's talking about easements that he got to deprived of, certain work that Frederick supposedly did for the Town of Keedysville. It's not

clear when you read the Second Amended Complaint, you know, first of all, what, you know, how does it affect him work that Frederick might have done for Keedysville? Second of all, he doesn't really say what the wrongful independent wrongful act is that he would have to show. And third, he still hasn't said he owns property that didn't get an easement because of anything my clients did or didn't do. He - - he plays - - I don't know how you would describe it. The fact that he won't give a straightforward answer, you know, "My name is Justin Holder. I own this parcel of property with this address. Uncle Eddies owns this other parcel of property with this other address. Ms. Holder -," etcetera, etcetera. He just says he owns property. He has a business interest in 30 Antietam Street, Antietam Drive. He doesn't say whether he owns it or not, doesn't say anything about the property he owns, doesn't say any- he does not specifically identify, sorry, he does not specifically identify property he owns or property Uncle Eddies owns. So - - so not only is it failure to follow the pleading requirements with a clear and concise statement of facts that show he's entitled to the relief under that count, he's made it even broader and less - - and more confusing. It's pretty clear

there's no evidence, no factual assertion on which you could base the standing to make that count. And there's no real assertion of an independent wrongful act by my client. The - - I keep going to his - - so and what I would say, Your Honor, is while it is true, his Complaint is still deficient in terms of pleading requirements, I would ask this Court to rule on the standing grounds, to rule on his failure - - a failure to state a claim on which relief can be granted because he has not clearly articulated facts that support the basis for his request for relief. In other words, Your Honor, I would prefer to the extent this Court has a basis to dismiss both - - both of those counts with prejudice, I think count one is pretty clear because the Court has already dismissed it with prejudice and he lacks standing. Count two, you know, he - - he - - there's no proof that he has standing based on his lack of - - of saying what he owns, you know, what property he owns that he doesn't get an easement because of anything that my client did or didn't do and a failure to state what my client did or didn't do. So I would prefer a ruling to the extent the Court feels it can make it with prejudice.

I want to - - returning to, you know, the failure to follow pleading requirements, and - - and this is

in our motion, the original Complaint was 34 pages long. It had nine counts and a 148 paragraphs. The first Amended Complaint only had three counts and had 133 paragraphs but was 46 pages long, 12 - - fewer counts and 12 pages longer than the original Complaint. The Second Amended Complaint contains three counts. It has 376 paragraphs. That's - - that's over - - that's almost 230 paragraphs more than the original Complaint, and it's 76 pages long, which is over twice as long as the original Complaint. So Your Honor's concern in September about things exploding, it's exploded. It's - - it's - - it's nearly incomprehensible prose to read what Mr. Holder asserts. I - - I think there's enough there to say it shows for count two, he lacks standing, and he has failed to state a claim on which he can recover from my clients for any sort of tortious interference. And if the Court isn't satisfied that those two, either or both of those two count, he still has failed to follow the proper pleading requirements.

Again, I don't believe count three, breach of contract on the Town of Keedysville has anything to do with my client. So I would ask Your Honor to grant my client's Motion to Dismiss or for Summary Judgment as to count two. And if the Court believes count one

touches on my client as to count one…

THE COURT: Well doesn't he ask for some kind of relief in count one against your client?

MR. STEELE: He did. He asked…

THE COURT: Okay.

MR. STEELE: …to - - to enjoin…

THE COURT: Right.

MR. STEELE: Yeah, what I said before.

THE COURT: For that - - enjoin for damages essentially.

MR. STEELE: Enjoin for damages and damages based on…

THE COURT: That's all right.

MR. STEELE: Yeah, okay. Whatever I said before, it's on - - it's on the transcript.

THE COURT: All right.

MR. STEELE: So I would ask Your Honor to grant the Motion to Dismiss. I'm going to ask with prejudice as to counts one and two. And I would leave it to your - - the Court's discretion as to how it sees fit to dismiss. Thank you, Your Honor.

THE COURT: Thank you. I think I'll do Mr. Estes next.

MR. ESTES: Sure.

THE COURT: We'll take the Town last.

MR. ESTES: Thank you, Your Honor.

THE COURT: Really because you all are new in this, and I've heard a number of this.

MR. RYND: Thank you, Your Honor.

THE COURT: All right.

MR. ESTES: A lot has been said and a lot has been written in my motions, in Steele's motions, Town of Keedysville's motions, so I'm not gonna belabor those - - those points. And I'd just like to echo Mr. Steele's points that he made in his arguments. But I do want to add just - - just a few points. As to Lisa Estes, the Plaintiff, Mr. Holder seems to lump me and my wife into…

THE COURT: I - - I didn't see anything about her in this pleading.

MR. ESTES: That's - - that's exactly my point, Your Honor. And she's still a party in the inclusion, continued inclusion of Mrs. Estes as a Defendant in this case to me reeks of bad faith. There's nothing in the Second Amended Complaint or in any of the Complaints for that matter that would - - that could give rise to any sort of cause of action.

The - - the second point that I'd like to make, I guess I'll just deal with - - with count one and count two because I don't believe count three has anything

to do with me or Lisa Estes. But before I get into that, just to talk about statute of limitations. I was trying to read through or wade through the Second Amended Complaint last night. And it did - - I just want to call the Court's attention to, let's see, specifically paragraphs 232 and 247 of the Second Amended Complaint. And this goes to statute of limitations. And I will read paragraph 232, find it. Paragraph 232 says, "Beginning on December 31st, 2019, and continuing thereafter." 2019 if that's when things first became discovered, and I think arguments have been made that arguments even before that - - that Mr. Holder had certain knowledge well before that time. And I sort of…

THE COURT: Well just that phrase doesn't even imply knowledge. It's just he's saying it started.

MR. ESTES: That's right. "Well in various texts, oral conversations and emails, Estes threatened Mr. Holder that he would sue Mr. Holder and his family." So he had knowledge at that time that if I was challenging any sort of property line, any sort of deed interpretation, any sort of work that isn't done, so he was certainly on notice in 2019, December 31st, 2019. I'm not - - I'm not saying that these are absolutely dispositive, but these are certain - -

indicative of - - of a party that had knowledge of all of this stuff well before…

THE COURT: So you're admitting he's a party? Are you…

MR. ESTES: Well - - well he has brought…

THE COURT: That…

MR. ESTES: He has brought the claim, Your Honor.

THE COURT: I understand.

MR. ESTES: That - - that's all I'm saying.

THE COURT: But isn't the first question, the first question he brings up is standing.

MR. ESTES: True.

THE COURT: Are you admitting he has standing?

MR. ESTES: No, no.

THE COURT: Okay. I didn't think you were.

MR. ESTES: Yeah. No, the - - the second - - I'll leave that, the statute of limitations. But as to - - as to count…

THE COURT: I would say that's a good idea because that can…

MR. ESTES: Yeah.

THE COURT: …sometimes be a quagmire.

MR. ESTES: Yeah. I - - understood. I was even wondering if I should - - if I should bring it up. But as to count one, I echo Mr. Steele's concerns that

this is just - - if the Court has already decided this for all intents and purposes. And it really is just trying to relitigate this issue. To - - to make the argument that somehow I am an agent of Uncle Eddies derivatively through Fred Frederick or FSA is just absurd. It's an absurd proposition. The - - the second point I'd like to make as to count one because it really does fail to state Plaintiff's upon which relief can be granted. There's no duty to disclose to Mr. Holder. There's no intent to deceive Mr. Holder. There's no evidence that it caused him to act in any other way, any normal way, and there's nothing in there that says that - - that we caused any damages. He's pursued his failed litigation on his own with full knowledge of all of the issues regarding my property and Uncle Eddies' property.

As to count two, I echo Mr. Steele's arguments that this is just a - - it's a collateral attack on the decision in - - in case number - - case 430. It's been litigated. He wants a second crack at the apple, and he shouldn't be allowed to get it. Likewise, he fails to state a claim on which relief can be granted. Now other the self-serving or the aggrandized arguments that, "Oh I had this three-quarters of a million dollars contract with my wife or some

management contract. And I have some sort of contract with Uncle Eddies or that I had some sort of contract with the Town." They're nothing more than self-serving statements to try to relitigate something which has already been decided in case 430. He doesn't present the - - the contracts themselves. And certainly if he wanted to put it in there, there's nothing in there which would impute any knowledge to me or my wife of - - of these contracts. Other than, I think he says in there that I attended a meeting in 2018 at the Town of Keedysville. And somehow he goes from that to importing knowledge to me that he had some sort of contract with his wife for three-quarters of a million dollars. I think it was for management of some property. Nowhere in the Complaint does he say that I had knowledge of his and Uncle Eddies, I don't believe, he and Uncle Eddies' contractual relationship. He certainly never presented that contract.

And lastly, he doesn't mention in there that if he had - - how - - he doesn't explain how I have knowledge of any contract that he has with the Town of Keedysville. I'm not privy to that contract. I don't know what's been negotiated between those parties. And likewise, just the - - the last of the echo of Mr.

Steele's point, you know, there's no independent wrongful conduct by me at all. I pursued my property rights and been successful in those efforts. And that's all I have to say, Your Honor. I'd ask the Court to dismiss these claims with prejudice in favor me and my wife. Thank you.

THE COURT: Counsel.

MR. RYND: Good afternoon or good morning, Your Honor. Michael Rynd on behalf of the Town…

THE COURT: It just feels like afternoon.

MR. RYND: On behalf of the Town of Keedysville. Your Honor, with Your Honor's permission, I'm going to start with count three, which is the contract.

THE COURT: I think that would be most appropriate.

MR. RYND: The - - the - - there is no contract, Your Honor. There - - there is some indication that the mayor at the time had indicated that there would be some service provided by the Town to extend the sewer line to Mr. - - to the - - to the property, which we don't know who owns the property. But at any rate, Your Honor…

THE COURT: And that's a - - and that's a key point is it not?

MR. RYND: I - - I would agree. And - - and we by

way of adopting and incorporating our co-defendant's arguments, we would also adopt and incorporate the standing argument because it's entirely unclear what you're hearing from the Defendants is you can read the 276 paragraphs and not understand what the injury was or how he is entitled to relief. But just to return to the contract, very specific language, well-established in the statute in Court's and Judicial Proceedings Article 5-A-301, there has to be a written contract executing and authorized by somebody with the authority to do so. That's not in the pleading.

THE COURT: Could you imagine every municipality in the State of Maryland if a contract could be somehow implied because of emails, what a mess we would have?

MR. RYND: I - - I…

THE COURT: It's staggering.

MR. RYND: I agree with you, Your Honor, 100%. And that's exactly where the *Gontrum* case came down and its progeny. It only makes sense if you go through a process. And the process is laid out in the Charter. It's particularly because it's at $1,000, it has to be approved by the council. None of that in the Complaint, Your Honor. So that's problem number one that there - - there really wasn't a contract.

However, even if there was a contract, he didn't bring a suit in time. Because the same statute provides that there's a one - - you have to bring the suit within one year of the breach. Now the breach theoretically was the Town's failure to dig a trench so he could have a sewer line. But that - - that project was completed in 20- late 2019 or 2020. And so the suit is untimely as to any breach of contract. But there really wasn't a breach because what he's complaining about was a discretionary offer by the mayor to dig the same trench that his water line was gonna go in, as I understand it. And then there was a problem at the time, Mr. Holder's contention is that his contribution towards the contract was to buy sewer pipe for the installation. But in reality, if that's his property, which we don't know, the sewer pipe would not be consideration to the Town. That's a benefit to him to have the sewer pipe to handle the sewage. So out of time, no real contract and no breach, Your Honor, as to count three.

On the other two issues, I would - - I would - - hearing that there's already been a ruling, a dispositive ruling on part of the tortious interference claim, as I understand the Complaint, we're - - we're, meaning the Town, brought in through

the actions of our co-defense. I don't understand them to be a separate thing.

THE COURT: Well I think it was - - didn't he claim it respondeat superior at some point?

MR. RYND: As, yes, as - - as…

THE COURT: Right.

MR. RYND: …to, I believe, the survey.

THE COURT: And they would have to be your employee.

MR. RYND: Correct, Your Honor. As we pointed out in the brief, there's - - there's case law that says that an independent contractor doesn't function as an employee for the purposes of - - I'm sorry, respondeat superior.

THE COURT: And that - - that transcends a lot of different areas of the law.

MR. RYND: Correct. I agree, Your Honor. However, even if - - even if these two tort claims had legs, and - - and I submit that they don't for the reasons that co-defendants have already argued and that we argue in our case in terms of failed pleading of the elements, the government, the Town of Keedysville has governmental immunity for governmental activities. The *Snyder versus State Department of Health* at 40 Maryland App. 364 at 372 clearly states

that provision, discretionary provision of sewer services is a governmental activity. And so the - - the Town of Keedysville is going to enjoy immunity from the two tort claims in counts one and two even if they had legs, which I submit that they do not.

He's got a claim for attorney's fees and punitive damages. Neither one of those apply in this case and should be rejected out of hand. And I would, not to belabor the point, but I would concur with Mr. Steele's argument that the Complaint is so deficient in terms of compliance with the pleading rules that it should be struck on that basis. So from the Town's position, Your Honor, we would appreciate a dismissal with prejudice as to the contract claim for either or both in the alternative the reasons that there was no contract. And if there was, it was barred by time and a dismissal with prejudice as to the tort claims because the Town's immune, and in the alternative, because there was a failure to plead them correctly.

And unless Your Honor has any questions, I'll take a seat.

THE COURT: I don't. Thank you, sir. All right, your turn, Mr. Holder.

MR. HOLDER: Thank you, Your Honor. I guess I'm gonna kind of start out on the standing.

THE COURT: Okay.

MR. HOLDER: Did you hear and address, since they've all adopted that standing issue, sort of incorporate the procedural posture of this case into that standing argument. So…

THE COURT: Excuse me one second. I'm sorry. I apologize, but I can't listen to you until…

MR. HOLDER: Understood.

THE COURT: And I don't like having something in my mouth while you're talking, but I got to put a cough drop in.

MR. HOLDER: I was sick last week. I understand, Your Honor. I hope you feel well.

THE COURT: All right, the only other thing I would say to you is that I have tinnitus in my ears, so you need to speak up. Okay?

MR. HOLDER: Yes, Your Honor.

THE COURT: Thank you.

MR. HOLDER: All right, so procedurally, January 21st, I filed a claim in this court against Mr. Estes and his wife, Mr. Frederick, his company…

THE COURT: Are you talking about in '23?

MR. HOLDER: In '23, yeah, January 21, 2023, I filed a Complaint, my wife and Uncle Eddies, all the necessary parties for what I intend to litigate, the

operative set of facts that I think give me a rise to this legal set of rights I'm here with and standing. They knew who the parties were. Everybody knew. We all attended the hearing April 25th. You declared the rights and status. I don't have contractual privity with Mr. Frederick. He did that based on a plat. It was an exhibit. I'm not - - I was on notice. He filed the exhibit. I knew that exhibit was coming in. You decided that that exhibit was what gave rise to the contractual privity, and I didn't have a tort duty to sue Mr. Frederick on as it came to concealment. That's how I understand April 25th to have happened.

THE COURT: I think that was one of the things. Go ahead.

MR. HOLDER: It was - - well it was the standing for a lot of the complaints like the negligence, the professional negligence. And I would - - I would remind the Court that, and I've – I've attached it to a motion there on March 11th. And I'm just, for the purpose of it, it is in the record, there's sworn testimony in the record for Mr. Frederick on June 7th. And he swore that it was Justin Holder that ordered the survey. I know that the surveyor only owes the duty to the person that they did it for. So in good faith, I filed the claim as myself against Mr.

Frederick. And - - and I would submit to this Court had Uncle Eddies filed the claim, we'd be in here arguing it's the other way that, no, he did the surveyor for Justin Holder because they just want the technical escape hatch. Okay? That's what they're here for. It's not that the - - the merit behind the fact, that's there. There's - - there's no dispute that there's no prior deeds or public records. There's just no dispute of that. That fact's been conclusively established in this case other than you banging your gavel. There's no defense to the fact that they did conceal that. Maybe I don't have standing to - - to sue…

THE COURT: They concealed what?

MR. HOLDER: That - - that he changed the property lines. He did not - - Frederick did not, and I don't want to get into arguing this because…

THE COURT: Well, no, because it's not before the Court.

MR. HOLDER: That's right.

THE COURT: Right.

MR. HOLDER: So…

THE COURT: I'm just trying to figure out what you were saying.

MR. HOLDER: Yeah.

THE COURT: And then you said, "Maybe I don't have standing." So keep going with that line of thought.

MR. HOLDER: So maybe I don't have standing to sue Mr. Frederick directly, but I surely - - what are the things that give you standing in the court? You have property and ownership. You have a contract. You have a legal duty. You can have taxpayer standing. You know? And I'm not saying that applies. I'm just giving you…

THE COURT: Right.

MR. HOLDER: …these are - - these are ways you can get standing. You could be a class of people.

THE COURT: There's a - - there's a lot of things that can give you standing, yeah.

MR. HOLDER: Right. But in this case, specifically I have standing under a contract, and I pled that at paragraph 43, 44 and 121 of the Complaint. The New Mexico law says that as a manager of a LLC, they owe me indemnity. It's in the contract. It's in the contract. As a matter of fact, I put an Affidavit in the record with that contract, with that 4.8 section of the Uncle Eddies operating indemnity clause saying it will indemnify me if I'm harmed acting in good faith for the company. And I'm the manager. I'm being sued by Mr. - - Mr. Estes

chose to sue me, not Uncle Eddies, he chose to sue my wife. I got sued vexatiously. I incurred a huge amount of third-party expenses.

THE COURT: Wait a minute. There's nothing before me about Mr. Estes suing you.

MR. HOLDER: It is. It's in the - - it's in the Complaint that - - that he sued me knowing I wasn't the right party in 430 that he really wanted to raise this dispute of the land with Uncle Eddies.

THE COURT: Okay.

MR. HOLDER: But as a manager, I have a duty to the company I manage. I can't just go acquiesce on claims. I have a duty to the people that I work for. I have a fiduciary duty. I mean that's what it is. I have a fiduciary duty, and they could sue me if I don't act in their interest. I have to act in my wife's interest when I'm on her property. I can't go and give her property - - I can't go and give her rights away.

THE COURT: Okay. I - - I got to tell you, you're - - I know you want to try and make this clear, and I want to understand what you're saying, but you're roiling it so much that it's becoming less and less clear to me.

MR. HOLDER: Okay.

THE COURT: Okay.

MR. HOLDER: Okay, so…

THE COURT: Because what they've said is you don't own the property. You haven't pled that you own the property. And you really haven't pled what your relationship with Uncle Eddies is.

MR. HOLDER: All right, let me try - - let me try it this way just a hypothetical example. Okay?

THE COURT: No, no, no.

MR. HOLDER: Okay.

THE COURT: I want - - hypotheticals won't work here. We're too far down the road.

MR. HOLDER: Okay, I go to Uncle Eddies, and I want to - - I want to be on this property. I want to occupy this property. I'm the manager. I said I want…

THE COURT: You're the manager of what?

MR. HOLDER: I'm the manager of Uncle Eddies. It's pled in the…

THE COURT: Did you plead it?

MR. HOLDER: Absolutely, I pled it.

THE COURT: Manager, but what does that mean?

MR. HOLDER: In New Mexico, it means a lot. In New Mexico, when you set up a LLC, a - - a manager actually has the right to go right into court and sue

in New Mexico court. I'm not saying I have the right here in Maryland.

THE COURT: Right.

MR. HOLDER: Maryland law's clear. If it's less than $5,000, I can go to District Court. Other than that, I need to bring a lawyer. I can't argue for the company here, and I don't want to do that.

THE COURT: Well you can't sue in your own name. You have to sue - - the corporation has to sue.

MR. HOLDER: No, I could sue as - - as Trustee of the - - of the corporation, I can…

THE COURT: You didn't do that either.

MR. HOLDER: …I can be sued and sue in my own name.

THE COURT: You didn't do that either. You - - you filed as Justin Holder.

MR. HOLDER: Right, and I'm not…

THE COURT: Individual.

MR. HOLDER: And I'm not asking for that. I'm not - - I'm not - - I'm not asking for that. That's…

THE COURT: Right.

MR. HOLDER: I'm not asking to sue as Trustee.

THE COURT: There's a lot of ways you could have sued, but you just sued as an individual.

MR. HOLDER: That's correct.

THE COURT: Not as manager, not as anything.

MR. HOLDER: Based off what Mr. Frederick told me under oath on Jan- on June 7th, 2021, that I ordered the survey that he had to do. That's in the record. That's a fact in the record. Despite that fact being in the record, you looked at another fact and you made a decision on April 25th that this Plat 1055 inclusively established standing, and I accepted that. I accepted that as the law of this case. Whether I accept it for purposes of appeal, maybe I'm going to appeal it, maybe I'm not. That's not the issue today. The issue is I accepted what you told me. I took what you said, you said, "Hey, there's two Defendants left." I said, "Sure. I got rights against Deena Holder. I got right against Uncle Eddies. I got contracts with them."

THE COURT: I didn't say you had rights against them.

MR. HOLDER: I know.

THE COURT: I didn't rule that.

MR. HOLDER: No. Well you couldn't.

THE COURT: Right.

MR. HOLDER: Because they weren't asking…

THE COURT: Right.

MR. HOLDER: …for anything. So I amended my

pleadings so that I was…

THE COURT: And your wife is no longer a Defendant is she?

MR. HOLDER: She's still a Defendant in the case. She's transferred all of her rights and status and claims to me in this case as part of, you know, settlement agreement.

THE COURT: Did you plead that?

MR. HOLDER: No, it's *nunc pro tunc* after the appeal's come back.

THE COURT: And is it - - did you plead that?

MR. HOLDER: I, yeah, I pled - - I pled in there that she's transferred to the rights and status to me. I just didn't…

THE COURT: But I don't know what that means.

MR. HOLDER: Well until I get these appellate decisions back on whether or not there's an alter ego, I apologize, but it's just a little difficult because I don't want what you said in this court on April 25th, I don't want to go against it. I think you made a sound legally decision. You established privity. You established standing. You based it on competent evidence in the record. I'm not complaining about your decision. But Mr. Estes on August 11th, heard exactly the argument I made, and then he went and made

that argument to the Appellate Court of Maryland. And I have to recognize that. I have to recognize that there's a superior court now with the same issues that you're deciding, and they're arguing collusiveness. Maybe - - maybe not before you.

THE COURT: No. No, that's not in front of me…

MR. HOLDER: Right.

THE COURT: …right now. I'm not deciding on it.

MR. HOLDER: But I have to be aware of these facts. So I had to amend my pleading again a second time so that I could acknowledge that Mr. Estes is up here in the superior court, and I - - I, you know, like I said, you - - you might not want to. It might not be right, but at the superior - - if appellate…

THE COURT: Are you talking about the Appellate Court of Maryland?

MR. HOLDER: Yeah, if appellate court says, "It is - - it is - - it is X," we're gonna have to accept in this court it's X, and you may have to amend that April 25th order in order - - you might. I mean I - - I would think you're - - I mean, but I - - I'm not saying you were wrong for what you were doing. I think you made a good decision.

THE COURT: Mr. Holder, it's - - we're all bound by whatever the appellate court orders.

MR. HOLDER: Right. Okay, yes. So acknowledging that, I'm - - I'm stuck, and I have these rights. Now they've put me into Article 19. They said I don't have a right to sue in contact. I don't have a right to sue anybody in a contract. Yet I still suffered damages.

THE COURT: I'm not sure who put you in - - and what's Article 19?

MR. HOLDER: Article 19's the constitutional catch-all. It gives you a common law course of action. I'll tell you what, I got - - I got some case law for you on that.

THE COURT: No, no, no, no.

MR. HOLDER: Okay.

THE COURT: I want you to - - I want you to explain - - explain it to me.

MR. HOLDER: Okay, Article 19 says that any wrong…

THE COURT: No. Who put you into Article 19?

MR. HOLDER: Well Estes and - - and Mr. Fred- oh, I know what I said, I said, "They." Yeah.

THE COURT: Yeah, you did. And I'm trying to figure out who you're talking about.

MR. HOLDER: Okay, so Mr. Estes initially on August 11 by placing that issue and briefing it fully in front of the - - of the appellate court, where I'm

a party. I'm privity with - - and I'm gonna be bound like you said by that judgment. By him putting that judgment up there, now I'm trying to plead within the rules and the guidelines you gave my on August 25th, which are fine. I accept those. That's fine. It was a sound decision in law. I accept that decision.

THE COURT: You've said that. Don't…

MR. HOLDER: But now we have the same argument I made to you on April 25th again before the appellate court. And I have two parties. Is there - - like, okay, so is there three parties? Is there Uncle Eddie, is there Deena Holder and is there Justin Holder? Or was it always just one? Is there some paramount inequity that we need to disregard that corporate structure? And if so, it - - it's gonna change the rights and status of the parties in this case because now you're dealing with three into one.

THE COURT: So what is - - I don't understand why you're arguing it this way.

MR. HOLDER: Well because I don't have a choice.

THE COURT: Are you asking for a stay? Is that what - - Uncle Eddies already did that.

MR. HOLDER: I mean there - - there's merit in a stay because it's so vexatious for you to make a decision today, us to appeal the thing. And - - and

really I - - I ask for a consolidation with 430 because then it will be all the parties will be bound by whatever's in the 430 case. It will be res judicata. There's not gonna be collateral estoppel. It's the same facts. It's - - I have fraud pled as a defense in there. I don't need standing to litigate fraud. I'm gonna be litigating that fact. I mean the jury's gonna hear it. It - - it makes a whole lot of sense to just have one case other than the Town of Keedysville might not have anything to do with Estes' property dispute. But they could go in with the 116 case, and we can just consolidate that over there because today we had another - - I mean these facts, we - - I don't need three cases. I need one case. But every case I get in, they say I don't have standing. I get into the property. They said, "Well it's Uncle Eddies." So when I asked…

THE COURT: Who owns the property? Your wife or Uncle Eddies?

MR. HOLDER: The way I understand it is that Uncle Eddies owns the property.

THE COURT: Okay.

MR. HOLDER: Okay? Uncle Eddies is owned by Kool Bus, LLC. Kool Bus, LLC, is a trust for my children. And it's real simple, Your Honor, listen, a - - a wife

and a husband buy a piece of property. A wife buys the property. She has two houses. She wants to put her kids there. She puts it in an LLC. It's an environmental disaster with sewage going in the creek or the well. We don't want cradle to the grave liability. You put it in an LLC company. I'm the manager. I don't have a membership interest in LLC, but I have a ruling, maybe it's some dicta, maybe it was unnecessary to the judgment, that's what you ruled. That's what I kind of thought. We didn't argue it on appeal, but now Mr. Estes is arguing on appeal that this dicta from this 371 case somehow is collateral and it conclusively establishes this alter ego. And if you look at the…

THE COURT: Well just because he argues it doesn't mean the Court of Special Appeals is going to even render a decision on it.

MR. HOLDER: They might not even entertain it. You might be right. And - - and we don't know. It's - - it's pretty well briefed. He asked to dismiss based on, I'd say they'd almost have to because there's a motion to dismiss based on that finding that they're gonna have to make - - but - - but you're right. And - - and the Court of Special Appeals a lot of times doesn't want to do that.

THE COURT: They're going to do what they want to do.

MR. HOLDER: You're - - well you're right about that. So anyway, I have to ack- I have to acknowledge that that's up there. I can't just come to you and say it doesn't exist because it's there. It's up there. There - - there's argument up there. So if they decide that, I'm in this lawsuit, and I'm asking for indemnity against the company that's disregarded. Okay? Then I'm - - we're gonna need a declaratory judgment between my wife and the company to decide what is it that we really own. And if it's a martial separation agreement, I can't even get that in this court because I need to pled it in an absolute divorce.

THE COURT: Are you alleging that as manager of the corporation you have the sole power to direct the corporation? Is that what you're alleging?

MR. HOLDER: No, I have - - all I can do is act, my - - my members will remove me if I'm not acting in the interest of this corporation.

THE COURT: No, correct, okay. I know, but…

MR. HOLDER: So I act…

THE COURT: But…

MR. HOLDER: …at the pleasure of the members.

THE COURT: Hold on. You missed my question. Let me try to make it clearer because I'm not sure I was clear. How many members are - - how many people are members of your corporation? Because you used plural.

MR. HOLDER: Kool Bus, LLC, is the - - well it should be, "It." It is a member of the corporation 100%, Kool Bus, LLC.

THE COURT: And who are members of that?

MR. HOLDER: It's - - it's held in trust for my two children.

THE COURT: So it's your two children.

MR. HOLDER: Correct.

THE COURT: All right, the trust. But who is the - - who is the members? We have to be - - have adults. Who's the member of it?

MR. HOLDER: Well it would - - it would just be an oral trust because I've never established it with paperwork. Because the minute it started, we - - we'd get hammered with lawsuits.

THE COURT: Okay. All right, so you haven't established the trust. Have you established this LLC?

MR. HOLDER: Yeah, the LLC's established in good standing. Kool Bus is in good standing down in New Mexico, not registered to do business in…

THE COURT: Maryland.

MR. HOLDER: Maryland. But I mean as far as I'm concerned, an LLC holding company doesn't need to do anything if they're just holding real estate. They're not transacting business. You know, we went ahead and we registered…

THE COURT: Well they're doing an awful lot of legal business here.

MR. HOLDER: Well Uncle Eddies is. And - - and he's registered.

THE COURT: Well.

MR. HOLDER: And he's in good standing.

THE COURT: All right, so you've got an LLC with no real members in it.

MR. HOLDER: Well it's a trust for my children. I mean I've told everybody.

THE COURT: But that's - - but that's - - the member would be the trustee for your children.

MR. HOLDER: Okay.

THE COURT: And I don't know who that is. So you've got a trust…

MR. HOLDER: Would be me and wife.

THE COURT: …there. Who else is a member of Uncle Eddies?

MR. HOLDER: Nobody, just Kool Bus. As - - as of 2019 and before June or May 30th of 2019, it was Deena

Holder. But then we amended a - - this contractual agreement because of all this…

THE COURT: Well technically then are you telling me she still is the - - the registered person who's the member?

MR. HOLDER: No, no.

THE COURT: So you've stricken her on whatever record she had?

MR. HOLDER: Her - - her membership interest, 100% has been transferred to an entity of my choosing, which I choose Kool Bus, LLC.

THE COURT: Which doesn't…

MR. HOLDER: As it benefits my children.

THE COURT: …really exist.

MR. HOLDER: It does. It's a - - it's a…

THE COURT: Well sort of. There's just no members in it.

MR. HOLDER: Well the trust, the children's trust.

THE COURT: But there's no trustee. So I don't - - I don't - - I'm really having a hard time with this.

MR. HOLDER: I mean those are the facts. I mean I'm - - I mean if you need me to go up and put them on record, then that means you can…

THE COURT: Okay, so circle the whole thing back, it's you. Your wife was, but she is out, so it's you.

MR. HOLDER: Yeah.

THE COURT: Okay.

MR. HOLDER: And - - and just…

THE COURT: So you're the only one.

MR. HOLDER: Just - - just so you know, yeah, and there was a whole lawsuit against Miles and Stockbridge about this because they told us to do it this way and it's terrible. It's a terrible thing. But that's - - that's a whole other problem.

THE COURT: I'm - - I'm aware of that lawsuit only because all of the Justin Holder versus these folks, come - - the motions and things…

MR. HOLDER: Sure.

THE COURT: …come to me in a queue. And as I was looking at the queue, I saw your name, and I went to look at it, and I saw, "Oh, no, that's Judge Long." And then I was looking at it, and I saw it said, "Miles and Stockbridge." Okay, I'm not - - I didn't know what it was. It's just not anything that I was dealing with. So that's how I knew about it. But…

MR. HOLDER: It sort of tangentially fits…

THE COURT: I didn't read anything on it. I just read what - - how it came up in the queue.

MR. HOLDER: Yeah, it - - it tangentially hits some of the issues that probably arise in this.

THE COURT: I - - I can - - I can guess based upon what you've told me.

MR. HOLDER: Yeah. So the problem is, you know, I don't - - I don't know. You were a lawyer for a while. I don't know that you go…

THE COURT: Only 35 years.

MR. HOLDER: Yeah. So I don't know that you're gonna advise your clients to go changing like LLCs and memberships and making all these different things. When you get sued, you want to kind of keep stuff steady so the Court doesn't see your, you know, unclean hands. That you want - - you want to make it so that it's easy for a guy like you to understand. The problem is in the Young suit, he didn't ask for a declaration that there was an alter ego. Nobody asked for that. Judge Wilkinson took it upon himself and just decided to do it because he looked into the 116 case and wanted to find a way to go kill that case that he told me he was gonna do that on several occasions, and it's very frustrating. Because I'm not supposed to have to deal with unnecessary dicta for collateral estoppel. It has to be something that's necessary to the judgment. He can't like collaterally estop people with two alternatives. It's - - it's very frustrating as a litigant when your cases are

getting stayed. And now the judge tells you, "Well I'm gonna go ahead and decide everything here. You're not gonna bring evidence in. It's not here." Then he writes this 27-page Opinion of dicta. And really all we need to know is Young adversely possessed Parcel 3 and that stone was the right stone, and he was trespassing. But he did it for so long, we couldn't eject him. Fine. Now see my deeds got voided. Okay? But my vendors still allow me to use the property, and I have a property. Not all my deeds got voided. I still have one quit claim deed for property.

THE COURT: And well you have one quit claim deed. So once piece of property is in the name of Justin Holder.

MR. HOLDER: One piece of property is in the name of Justin Holder. I pay taxes on it. It's on the tax maps. It's part of Stonecrest develop-…

THE COURT: But that has nothing to do with this case.

MR. HOLDER: It's - - it's up on the top of the hill by Stonecrest, not down by where the…

THE COURT: Right, okay.

MR. HOLDER: Okay?

THE COURT: So - - so in answer to my question…

MR. HOLDER: And it doesn't need - - it doesn't

need, you know, utilities and stuff like that.

THE COURT: Right. So but just - - just so the record's clear…

MR. HOLDER: Yes.

THE COURT: It has nothing to do with this case. Other than it - - it's somehow close to the - - the property here.

MR. HOLDER: The - - the parties in the Young case, where that deed was accepted into evidence as accepted as good title, my position in the Court of Appeals now is that they waived their right to any of the property outside of what was in rem. Because I put it in my answer. So I - - I should have superior title after that court decision. But because we haven't had a court decision, I only have whatever was quit claimed to me.

THE COURT: And what are you talking about now?

MR. HOLDER: This is - - this is gonna be - - well the…

THE COURT: You're - - you're not answering my question so I'm…

MR. HOLDER: I know.

THE COURT: …very confused.

MR. HOLDER: Okay, so it's my position that I do have property that is within this litigation adjacent

to Uncle Eddies. It's an abandoned railroad property that I've had superior title to that. I have superior title to a strip of land in between what Jeff Young's…

THE COURT: okay, but it doesn't - - but it - - none of this property dealt with the issues that are the core of this case.

MR. HOLDER: It really did. Because the fraud down at the - - at the creek extended - - it was - - it was they - - they moved the line.

THE COURT: Have you - - have you pled that?

MR. HOLDER: Yes. I pled it down.

THE COURT: You pled that it hurt your property that you own somewhere else?

MR. HOLDER: Yeah, that was the whole problem with this. It hurt - - it hurt my - - they decided that Jeff Young, and when I say, "They," Andrew Wilkinson decided Jeff Young adversely possessed Parcel 3. That's a final judgment. I'm not contesting that he made that decision and he adversely possessed.

THE COURT: Okay.

MR. HOLDER: Okay? He voided my quit claim deeds.

THE COURT: Right.

MR. HOLDER: Three out of four.

THE COURT: Okay.

MR. HOLDER: Only three out of four. I appealed

that, filed for petition for certiorari. It's down at the Supreme Court of the United States for taking…

THE COURT: Certiorari.

MR. HOLDER: Certiorari, yes.

THE COURT: Okay.

MR. HOLDER: I'm - - I'm…

THE COURT: That's okay.

MR. HOLDER: All I know is what they say on paper.

THE COURT: Yeah.

MR. HOLDER: I don't know what to say in court.

THE COURT: No, no, no. Please, I was not calling you down for it. I was trying to understand what you were saying. That's all.

MR. HOLDER: No, and I'm going to try to say it the way you did. But I'm not…

THE COURT: Certiorari.

MR. HOLDER: Okay, certiorari. Okay, so…

THE COURT: So you have a petition for certiorari…

MR. HOLDER: At the United States Supreme.

THE COURT: …from the Supreme Court of Maryland to the United States Supreme Court. Have they accepted your case?

MR. HOLDER: Not yet.

THE COURT: Okay.

MR. HOLDER: It got sent back. You have to make

these really neat little books on 6 and 1/8 by 9 and a 1/4.

THE COURT: I'm aware.

MR. HOLDER: And if they're not the right pages…

THE COURT: I…

MR. HOLDER: Okay. So I got it right now. They're getting that today in the mail. And that is basically a regulatory taking Town of Keedysville subdivision ordinance. They can't take the property from one party and give it to another party. It's still a taking. That's the issue down before the court. That's what was done to the extent, you know, Judge Wilkinson was a state actor acting in color of title. It's also the State, the State's making a claim to this abandoned railroad at times. Sometimes they're not making a claim. Sometimes it's a right of way.

THE COURT: Okay. But that - - this still has nothing to do with this.

MR. HOLDER: It does because the property marker, well I - - I don't want it to be part of this. I've tried to keep this case narrow.

THE COURT: Okay, good.

MR. HOLDER: I don't want that to be part of this.

THE COURT: Thank you. That helps.

MR. HOLDER: Yes, yes.

THE COURT: Because remember when I was talking about roiling? It was all of a sudden becoming murkier and murkier, but it's okay.

MR. HOLDER: Well I don't want to come here and concede anything. You know?

THE COURT: I accept it. You don't want it part of this. It's not.

MR. HOLDER: Yes, yes.

THE COURT: Okay.

MR. HOLDER: So let's not - - let's not - - that's part of the 116 case. That's the request this morning. It's pretty much subsumed this case, the pleadings in that. The - - the - - basically what I'm trying to litigate in this case, okay, is the contract between the parties, my rights and status, and the people…

THE COURT: All right, which…

MR. HOLDER: …that interfered with them.

THE COURT: Which contract?

MR. HOLDER: The contract between me and my wife, which has been settled. I'll - - I'll represent to the Court we've settled that *nunc pro tunc* depending that this appellate court comes back.

THE COURT: So it's a conditional contract.

MR. HOLDER: It's a conditional…
THE COURT: Okay, so…
MR. HOLDER: It's conditional. It's had two modifications…
THE COURT: It's not in being yet.
MR. HOLDER: …since this case has started.
THE COURT: It's not in being yet except because you don't know what condition's gonna…
MR. HOLDER: Correct.
THE COURT: All right, okay.
MR. HOLDER: Yeah.
THE COURT: All right.
MR. HOLDER: The Uncle Eddies, I have the indemnity agreement. Okay?
THE COURT: All right, which doesn't mean anything to these folks.
MR. HOLDER: No, absolutely not. They have nothing to do with that indemnity agreement. That's between me and Uncle Eddie, and me and Uncle Eddie are gonna litigate that and the facts in my Complaint. And that's what you said April 25th, and I'm fine with that.
THE COURT: Well, no, I didn't say that. All I said was it only left Uncle Eddies here in the case. And based upon what I heard today, I don't have any

idea what indemnity you're talking about. So and because you're talking about some kind of a wrong. The wrong could only be to as to Uncle Eddies, not as to you. So there would nothing to indemnify you for. So it's kind of like I don't - - there's nothing there.

MR. HOLDER: Can I - - can I read the actual - - I mean it's in the record. It is in the record.

THE COURT: Well - - go ahead.

MR. HOLDER: The actual indemnity agreement, the language of it, the contract.

THE COURT: Read the indemnity agreement.

MR. HOLDER: Okay. So this is going to be filed in what I called an opposition to his, I don't know, 17-page line with three Affidavits. I took it as a motion for summary judgment. I know he said it's a line, but I think I had to take a little bit more care with that because he filed two Affidavits with it and was moving the Court, at least the way I interpreted it. Like you said, better safe than sorry. So this would have been, I think he calls it collusive litigation. I - - I - - I actually…

THE COURT: Well don't get into that now because that's a totally different issue.

MR. HOLDER: I'm not getting in - - I'm not. I'm

just trying to reference - - I'm just trying to reference where it is in this.

THE COURT: You - - I would just - - the best thing to do would be not to do that out loud.

MR. HOLDER: Okay.

THE COURT: Because it becomes confusing then.

MR. HOLDER: Okay. So it's page 2, and the document was filed on October 25th of 2023. And on page 2, I put the verification and the footnote at number 2, and it's paragraph 2 at section 4.8 of Uncle Eddies operating agreement. "The Company will indemnify any person who was or is a party Defendant or is threatened to be made a party Defendant in a pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, other than an act by or in the right of the company, by reason of the fact that the person is or was a member of the company, employee or agent of the company or it was serving at the request of the company. The termination of any act, suit or proceeding by a judgment or settlement conviction or upon a plea of nolo contendere does not imply that the parties did not act in good faith and in a manner which he/she reasonably believed to be lawful and in the best interest of the company." So I pled. I was

in lawsuits. I pled. I've been charged criminally, ten criminal charges over this when they knew I had colorable title. It had to get adjudicated, something in the appellate court. There's clearly colorable title. I was maliciously prosecuted. I'm not bringing the malicious prosecution in this case. That's in the 116 case. That's the civil rights case. I just want to be indemnified.

THE COURT: How many lawsuits do you have going right now?

MR. HOLDER: Well I settled a couple of them last week. But, you know, a fair amount.

THE COURT: Just give - - give me an approximation. Twenty?

MR. HOLDER: Probably 20. Most of them are PIA actions. You got to sue the State to get documents. They don't give you documents unless you sue these people. Okay? That's just how it is. They give you the documents, it moves out. That's just - - it - - it's - - it's - - it's dragging, pulling teeth.

Anyway, indemnification, I want to be indemnified by Uncle Eddies. I thought - - when I, honestly, and I'm telling you right now and it's in the record, I had a June 7th sworn testimony from Fred Frederick that says I ordered the survey. Justin Holder ordered

the survey. I said, "Fine." And I guarantee this Court, I guarantee had Uncle Eddies sued Fred Frederick, they'd be in here waving that around saying, "No, no, no, Justin Holder ordered the survey. You can't sue Uncle Eddies. There's limitations." I did what was in that - - what was - - I mean the - - the surveyor owes a duty to his client. So I go to Uncle Eddies, I'm getting this land. I want to occupy it. I want to know where it's at. I go ask Mr. Frederick to do a survey. I think if you get a land lease, I don't think it's unreasonable to say that's totally unthinkable that if somebody's gonna rent a piece of property, you're gonna build a Sheetz on a piece of land, something like that, you got to get a survey. There's lots of ALTA surveys done for - - for lease corporations. It happens all the time, Your Honor.

THE COURT: Okay.

MR. HOLDER: So I under reasonable belief that's how I framed my lawsuit. We came in April 25th, I accepted every word you said. I said, "Fine." I got an indemnification contract with Uncle Eddies. I was smart enough to bring him and Deena Holder in because I knew their rights were gonna be at issue.

THE COURT: You - - you keep arguing about Uncle

Eddies. The only - - and the only - - and I'm not sure why you're doing that unless you're afraid I am going to sua sponte dismiss Uncle Eddies.

MR. HOLDER: They're in default, Your Honor. Mr. Estes made note of that.

THE COURT: Yeah, but I could still dismiss them.

MR. HOLDER: Sure.

THE COURT: Are you afraid that I'm going to sua sponte dismiss them?

MR. HOLDER: Every time I come to this court, it feels like I have no rights in this court. I - - I don't know what I'm supposed to do. I have no rights. Like what - - I've been - - I have been injured. I've spent hundreds of thousands of dollars on these lawsuits because I'm protecting my kids, my wife's property. Something that has nothing to do with me, but I can't acquiesce on it because I owe them a duty. I can't. I'll get sued either way. And they knew this. They knew this going into this what they were doing. And when I say, "They," Mr. Estes…

THE COURT: Mr. Holder, it would really be helpful, I'm gonna let it slide this time, but when I ask a question, we've had this same problem now…

MR. HOLDER: Okay.

THE COURT: …several times here this morning.

MR. HOLDER: I apologize, Your Honor.

THE COURT: I ask a question, and boom you go off in a direction that has nothing to do with what I asked.

MR. HOLDER: All right, let me - - let me try again. I apologize.

THE COURT: All right, no, go ahead. I'm just…

MR. HOLDER: Well - - well what was your question? I want to answer your question.

THE COURT: I don't even remember it now because we went off in a direction, and I'm not sure - - it didn't land us anywhere…

MR. HOLDER: Okay, I was talking about…

THE COURT: …I wanted to be.

MR. HOLDER: I was talking about Uncle Eddies and my duties and as manager. And then I was talking…

THE COURT: No, go ahead.

MR. HOLDER: Before that I was explaining - - okay, so anyway I - - I guess I'm still on the standing argument to be honest with you. I have a contract. I have an indemnity clause. It's pled into my Complaint. There's been no factual evidence by Town of Keedysville, Fred Frederick, Ben Estes, Lisa Estes, any of the Defendants, no factual evidence in this record.

THE COURT: Because you have an indemnity clause with the corporation you control.

MR. HOLDER: I don't know that the - - that control is in the record. That's - - they have to show it's…

THE COURT: No, you just told me you did because you're the only person that has anything to do with it. You just…

MR. HOLDER: At - - at…

THE COURT: …said that.

MR. HOLDER: …the pleasure of the members.

THE COURT: There isn't any members. There are no members.

MR. HOLDER: Well then - - then it's a fraud.

THE COURT: There's no members in…

MR. HOLDER: Then there's no corporation.

THE COURT: …Uncle Eddies, and there's no members in the other LLC.

MR. HOLDER: Well then you need to disregard the corporation and that's the problem. Because if that's what the facts you're bringing…

THE COURT: But the problem is…

MR. HOLDER: This is the set of facts you're working with, they give me a different set of rights.

THE COURT: The - - isn't Uncle Eddies the title

holder?

MR. HOLDER: Not if he doesn't exist. Not if he needs to be disregarded, Your Honor. With all due respect, it has to be A or B. It can't be some situation where I have no rights, and I can't sue anybody.

THE COURT: That's not my problem, Mr. Holder. That's your problem.

MR. HOLDER: It's a constitutional problem. Article 19 entitles me to damages in that case.

THE COURT: It is your pleading problem. That's what it would - - that's what they're whole argument goes to and what I'm trying to impress on you.

MR. HOLDER: I know and it was caused by them.

THE COURT: Because you're just gonna skip over all that stuff and go to the fact that you say they've done you wrong, you've been injured by it and you want damages. But you've got to set it up right. And I found before that you hadn't done it, and I'm afraid you hadn't done it yet.

MR. HOLDER: Okay, so…

THE COURT: But I'm still listening.

MR. HOLDER: The only - - the only way I can do it is I have to either disregard your order and say, "Oh, well, you know, you got to revise it because there's

an alter ego." And now you see the facts. You're telling me the facts are there is no corporation. If you're going to decide that…

THE COURT: I didn't…

MR. HOLDER: …then we have to change.

THE COURT: I didn't say there was no corporation.

MR. HOLDER: Okay.

THE COURT: I said there were no members didn't I?

MR. HOLDER: Okay, then I have to act at the pleasure…

THE COURT: You can't - - you can't put words into my mouth.

MR. HOLDER: Then I have to act at the pleasure of the corporation. Either - - either we regard it…

THE COURT: And I…

MR. HOLDER: …or we disregard it.

THE COURT: No. And I'm not ruling any of this.

MR. HOLDER: Okay.

THE COURT: What I'm doing is parroting you.

MR. HOLDER: That's fine. And I would say if you really want facts on the record, you should put me in that box so I can put them in the record. Because if we're gonna decide something on facts…

THE COURT: This is not an evidentiary hearing. This is a motions hearing.

MR. HOLDER: Okay. So we have to go on the well-pled facts in the Complaint. That's all we have or whatever other documentary evidence that would be admissible in Court in the record for summary judgment. That's - - that's what we have to go on and plead - - you know, arguments of counsel, they're not evidence.

THE COURT: I understand that.

MR. HOLDER: I mean I'm trying to tell you. I'm not trying to hide the ball. Like I'm not trying to hide the ball from you at all, Your Honor. I'm trying to tell you…

THE COURT: They're not evidence except when certain admissions are made, okay, by counsel or - - or a party, I can consider them.

MR. HOLDER: Right. And…

THE COURT: And I am doing that.

MR. HOLDER: …we can stipulate to them as well. You know?

THE COURT: Okay.

MR. HOLDER: I mean if we - - if Mr. Estes wants to stipulate there's no corporation, I'm - - I'm willing to stipulate to that. But Mr. Steele doesn't want to do that.

THE COURT: But you can't do that because the

corporation owns the property.

MR. HOLDER: Not if - - not if it doesn't exist as a matter of law. It's a de facto - - it's a de facto dissolving. I mean it's - - it's - - it's whatever, *nunc pro tunc*. It never did because it can't.

THE COURT: You can't argue that because you just argued that it does exist.

MR. HOLDER: I - - I…

THE COURT: And I'm not here to decide whether it does or not. I'm here to decide whether you, Justin Holder, have standing.

MR. HOLDER: Well to do that, I think you need to make a declaratory judgment of the rights, status of that corporation so you can give rise to this proceeding, Your Honor. That's - - that's the problem.

THE COURT: I - - I don't have to do that, no.

MR. HOLDER: It's been prayed for. You have to. It's been…

THE COURT: No, I don't.

MR. HOLDER: It has been prayed before this Court. It is before this Court, and you have to do the declaratory judgment.

THE COURT: No, I don't.

MR. HOLDER: That's the law. Okay? I mean I - -

I'll defer to you.

THE COURT: Okay, thank you.

MR. HOLDER: Then all I can tell you is there's a case in the appellate court that says it's A. There's a case before this Court, where you ruled, it says it's B. I think it's really hard to pierce a corporation.

THE COURT: Says what's B?

MR. HOLDER: That it's - - that it is a corporation.

THE COURT: No. I'm, once again, I haven't - - when I - - when I'm ruling, I'm gonna tell you I'm ruling.

MR. HOLDER: Okay.

THE COURT: Okay?

MR. HOLDER: Understood.

THE COURT: Right now I'm - - I am having a question and answer session because you're arguing, and I'm questioning. And so when I say, "Wait a minute, you tell me there's a corporation." Okay? I - - you pled Uncle Eddies is a corporation. That a member is another corporation. And there - - but there's no other members in Uncle Eddies other than this corporation, which I can't remember the name of.

MR. HOLDER: Kool Bus with a K.

THE COURT: Kool Bus.

MR. HOLDER: With a K.

THE COURT: Okay, all right. But that also has no members because it was set up to be a trust for your kids. The trustee would be the member, but the trust has never actually been set up. So no trustee has been appointed.

MR. HOLDER: My children have a trust with Michael Day in the family inheritance trust.

THE COURT: Okay. So is Michael Day the member?

MR. HOLDER: I don't think so. I don't think…

THE COURT: Okay.

MR. HOLDER: …Michael Day would be the member because I haven't - - I - - I don't think I - - I went through the process correctly. I think it's oral. I think I've told everybody. I think I've made declarations. I think you could establish it by a factual record. But I don't think there - - I can give you a piece of paper that's gonna serve what - - what you want it to. Because all this happened as we were being litigated against.

THE COURT: I'm not sure what that has to with anything. But go - - go ahead.

MR. HOLDER: So I mean, okay, this is getting into to the elementary…

THE COURT: I'm not getting to the merits of this. I'm trying - - this is all procedural. A motion to dismiss is, do you have standing? Is there a statute of limitations? Have you pled sufficient facts in order to go forward with this case?

MR. HOLDER: Okay, so…

THE COURT: Those are the types of things I have to decide today.

MR. HOLDER: All right, so let's think about this. You want to own a piece of property. Right?

THE COURT: I'm sorry, what?

MR. HOLDER: If somebody - - if something, some entity wants to own property, they have to be a real entity. You can't transfer a piece of property to a non-existent entity. So Uncle Eddies if it non-exists, it cannot be the owner. It can't be. If it doesn't exist, it cannot own that property.

THE COURT: I don't know whether it exists or not. I'm…

MR. HOLDER: Well that's - - that's - - I'm telling you in these pleadings, that first, I - - I pled that it was me because based off what Andrew Wilkinson said, I just moved on. I moved on with the - - the law of the Court. I moved on with what he told me on June 7th.

THE COURT: He handled the trial.
MR. HOLDER: He did.
THE COURT: So he entered a ruling.
MR. HOLDER: He did.
THE COURT: I have not handled a trial in this matter.
MR. HOLDER: I understand.
THE COURT: Okay? So I am not ruling one way or another about a corporation, and I'm not - - today's not a day if - - if you were to survive on a declaratory judgment, that I would render that kind of a ruling today anyway because…
MR. HOLDER: Okay, then - - then my pleadings say the corporation exists. My pleadings say I have a contract. There's been no evidence in the record that I don't. We're gonna have to accept those well-pled facts. I got standing. I got standing to bring a claim against Uncle Eddies. I got standing if somebody interferes with that contract tortiously.
THE COURT: But - - but don't - - why are you arguing Uncle - - that's…
MR. HOLDER: I'm not.
THE COURT: That gets back to my question.
MR. HOLDER: I'm not.
THE COURT: Because Uncle Eddies isn't even here

today.

MR. HOLDER: I don't care about Uncle Eddies. They're in default. They're not here, don't care. I'll take a judgment against them. It doesn't matter.

THE COURT: That's what I was saying…

MR. HOLDER: Well wouldn't that make it simpler in my life if I just defaulted and took all the assets for me? Wouldn't that make my life a whole lot simpler?

THE COURT: I have no idea what that has to do with what I have to decide today.

MR. HOLDER: Well it doesn't, but it's why I'm here trying to get back what I put into this company defending its creek access, defending its access, defending its right to get a sewer line that's not polluting the - - the creek and the well. Like those are important things for not only for me, for - - for like the environment. You know? It's important as a person in the environment, I'm defending these things in good faith, defending easements of public roads so that the Town has an easement to install this sewer line, which Mr. Frederick is telling them that they don't. According to my Complaint, he's telling them, "No, you don't have an easement." And why's he doing that? Because he's trying to hide this fraud down

here in the corner. He's trying to hide that he changed the lines. That's the problem. Okay? So I -- I'm incurring third-party expenses out the wazoo, getting criminally charged. And I have expenses under third parties. St. Luke's Church says I can recover those expenses. I've paid a lawyer in these cases, Your Honor. I've paid attorneys. I've paid lots of attorneys. I've spent lots of money on attorneys. And if all we wanted to do was go down and have this little dispute, we didn't have to do all this. But we didn't because we had to cover things up and that's the problem. That's what this case is. It shouldn't be like this. It's simple. Were there prior deeds and public records or were there not? And it's clear, there -- there wasn't. There wasn't. And if we'd just admit that, Judge Wilkinson doesn't rule the way he does. He can't. He'd have to say since 2018, it's been like this. That's because in my Complaint, I say that Frederick took and gave the description unbeknownst to me or Uncle Eddies, he changed it. And if -- if the property line was always the creek, it wouldn't have made a difference where it was in the floodplain if it was on the bank or 2 foot in the bank. But now because it's courses and distances was the decision in that case, it does matter. It matters

a lot because now we've cutting off the whole eastern side of Uncle Eddies peninsula from the - - the creek, which matters to Uncle Eddies, doesn't matter to me, but it mattered to me as a manager. I can't allow that to happen. I'm the one being sued against trespass. I'm the one that has to go in. I'm in privity. There's no way he gets a decision against me, and when I say he, Mr. Estes gets a decision against me in a trespass case and then somehow it doesn't bind on Uncle Eddies when I'm the manager. Somehow it doesn't bind with - - with my involvement. I'm clearly in privity of contract with Uncle Eddies, that if there's a - - a judgment against me or Uncle Eddies, I have to stop it. And that is the essential element of the injunction I'm asking for you to make is it's a Quia timet injunction is what it is. I'm a stakeholder with no direct course of action against Fred Frederick or Mr. Estes. But if they go, it happens all the…

THE COURT: Are you admitting that?

MR. HOLDER: I'm - - I'm a stakeholder in this claim because I - - an indemnity.

THE COURT: No, no, no, no. Are you admitting that you have no claim against these Defendants?

MR. HOLDER: In count one. I'm not making a claim

against other than the Quia timet injunctive relief I'm asking for. I'm not making a claim in this Complaint. Yes, yes, absolutely I'm admitting that. I am not making a claim…

THE COURT: So count one gets dismissed?

MR. HOLDER: It goes against Uncle Eddies. Count one is indemnity against Uncle…

THE COURT: Forget Uncle Eddies. We - - we've got three entities.

MR. HOLDER: Oh - - oh, yeah, as to them, yeah, get rid of it.

THE COURT: Okay. So…

MR. HOLDER: Yeah, get rid of it. They don't need to be here for count one.

THE COURT: …based upon the admission…

MR. HOLDER: Yeah.

THE COURT: …from the Plaintiff, count one as to each and every Defendant except Uncle Eddies…

MR. HOLDER: Correct.

THE COURT: …is dismissed with prejudice.

MR. HOLDER: And Deena Holder depending on the outcome of that *nunc pro tunc*.

THE COURT: Is - - is - - is she still a Defendant in this? I can't recall.

MR. HOLDER: She's still a Defendant in…

THE COURT: Do you all agree that she's still a Defendant in this?

MR. HOLDER: Yeah, I'm sorry. If all we were arguing was count one, I - - I didn't need to spend all that time on that.

THE COURT: Well, no, no, they're - - they're arguing everything.

MR. HOLDER: Okay.

THE COURT: Hold on. When did you file your Complaint, your Second Amended Complaint?

MR. HOLDER: October maybe 25th, I'd say, right around in there. That was really - - that's really the only thing I filed.

THE COURT: Wait a minute.

MR. HOLDER: In this case. Everything else has been Defendants filed.

THE COURT: Saying October, around October 25th?

MR. STEELE: October 5th, Your Honor, I believe.

THE COURT: October 5th?

MR. HOLDER: That might be…

MR. STEELE: That's what the certificate of service says.

MR. HOLDER: Yeah, that's probably accurate.

THE COURT: Here it is. Okay, well let's see here. I don't see her as a Defendant in this.

MR. HOLDER: Well I…

THE COURT: I could be wrong. I'm - - I'm - - it's you don't - - you just put et al. here. When did you file your original Complaint?

MR. HOLDER: January 21st. And that's - - I only usually add the parties on the Complaints. And then I'll put them in…

THE COURT: January…

MR. HOLDER: …through MDEC and stuff.

THE COURT: There's an Amended Complaint May 5th.

MR. HOLDER: She's not gonna be on there. That's just Town of Kee-…

THE COURT: That's '23. That's '23.

MR. HOLDER: Yeah, that's just Town of Keedysville.

THE COURT: All right, January of '24, you're saying. Right?

MR. HOLDER: January of 2023, January 21st. So it's the first very - - probably the very first document that hit this docket.

THE COURT: Well, okay, let me just see here. But the January '23 was when we had our last motion on that Complaint.

MR. HOLDER: That's correct.

THE COURT: Right, okay. So that's the - - then

there was an Amended Complaint in May. Let's get to that one.

MR. HOLDER: Which I just filed, Town of Keedysville and Frederic Frederick, et al.

THE COURT: All right. See, hold on. When in May was that filed?

MR. HOLDER: Probably around the - - maybe that was the 25th and that's why I was thinking 25th, somewhere - - it was later on in May, maybe 15, Your Honor.

THE COURT: Oh, here it is. I got it, May 5th, okay.

MR. HOLDER: And I'm - - I'm sorry if I was raising my voice to you…

THE COURT: Yeah, that's just…

MR. HOLDER: …or anything earlier, Your Honor. I just…

THE COURT: Actually, the Estes aren't even in that one.

MR. HOLDER: Well he is. He's a party. It's under parties, jurisdiction and venue section of the Complaint.

THE COURT: It says, "Justin Holder versus Frederic Mark Frederick, et al., Mayor and Town -," but your wife's not.

MR. HOLDER: She is. She's in - - she's in the parties, jurisdiction and venue section of that.

THE COURT: So in other words, you're saying the et al. on this Amended Complaint includes your wife?

MR. HOLDER: Yeah. It was - - they were already parties to the suit, and they weren't dismissed from the…

THE COURT: All right, okay. It's a tough way to plead, but I'll accept it for that.

MR. HOLDER: Okay.

THE COURT: So now - - so just so we're clear…

MR. HOLDER: I'm doing as good as I can as I go along here.

THE COURT: I understand. Just so we're clear, count one is dismissed with prejudice against Mayor and Council of Keedysville, a.k.a., the Town of Keedysville, Mr. and Mrs. Estes and Frederic M. Frederick and Frederick Siebert and Associates, Incorporated. Any other remaining Defendants are not affected by that ruling.

MR. HOLDER: I mean, you know, I'm gonna - - I'm gonna just put a caveat on that to the extent…

THE COURT: I'm not sure why because you just said they shouldn't be in here.

MR. HOLDER: Uh-huh.

THE COURT: And they're - - you're okay with them being dismissed as to that count, and we've done that, okay.

MR. HOLDER: I don't think they were ever in that count to be honest with you. I was asking for some injunctive relief against them.

THE COURT: Then they're in it. If you're asking for a claim against somebody, they're in it. Now I - - I kind of tend to agree with you that you didn't plead them in it, but then you asked for relief from them.

MR. HOLDER: Just it was a Quia timet - - Quia timet injunction, so it's a - - it's a third-party injunction. It's a - - it's a tool in equity the Court could use to make sure they don't go and spend up all the money, default, transfer assets.

THE COURT: Yeah, if it's pled, but it wasn't pled. So go ahead.

MR. HOLDER: Okay, so anyway I would just say that that's subject to Rule 2-602(a) that you can say they're dismissed with prejudice, but until all claims against all parties are dismissed, then I…

THE COURT: Those claims are dismissed with prejudice.

MR. HOLDER: So we're certifying that 2-602(b)

today then?

THE COURT: Move on.

MR. HOLDER: Okay. I mean I have to take it as, you know, I mean…

THE COURT: You - - I only ruled it…

MR. HOLDER: I got…

((CROSSTALK))

THE COURT: …because you - - that I ruled exactly what you said.

MR. HOLDER: Well I mean I'm not - - I'm not saying I'm gonna appeal it. But if you're gonna certify it…

THE COURT: I'm not sure what you would appeal when you said they shouldn't have even been in the case in count one to start off with.

MR. HOLDER: I'm just trying to establish that - - that it's a final judgment.

THE COURT: It is a final judgment because you said they shouldn't even been here in the first place.

MR. HOLDER: I'm not saying I'm gonna raise it. Just trying to understand under 2-602(a) how you can deny motions with prejudice, how you can dismiss claims with prejudice. That's fine. You don't…

THE COURT: I dismissed it based upon your representation to the Court.

MR. HOLDER: That's fine. And I'm not - - I'm not…

THE COURT: That's - - that's - - I haven't - - I didn't go to any of the - - I didn't rule on standing. I didn't rule on sufficiency. I didn't rule on anything. I ruled on it because of your representation to the Court that they should never have been in on count one to start off with.

MR. HOLDER: Right. So my - - my appeal is you can't dismiss somebody on account they're not in it. That's all. Like they were never in it.

THE COURT: But you asked for…

MR. HOLDER: Injunction.

THE COURT: You - - you asked for relief.

MR. HOLDER: Okay, an injunction.

THE COURT: It doesn't matter. It's still relief.

MR. HOLDER: Okay.

THE COURT: And it's an injunction that asks for money. That's what you're doing. And I'm not gonna get into whether that's appropriate or not. It's just that you asked for relief. So they were right in having to try to oppose it because you're asking for something from them. And I'm, you know, I'm taking you at your word. They should - - you didn't really mean for them to be in count one. So they're out of

count one.

MR. HOLDER: Well what they really want is the fact of fraud not getting to the adversarial party…

THE COURT: They're - - they're out.

MR. HOLDER: …that's what they want. That's fine, okay.

THE COURT: Based on your representation.

MR. HOLDER: Move on.

THE COURT: Go onto anything else you want to argue.

MR. HOLDER: Okay, so the facts in count one, when I'll get those decided, that will be an ultimate decision of fact, that shows the unlawful conduct. That's the unlawful conduct they're trying to conceal.

THE COURT: What - - what - - now what is it that you're talking about?

MR. HOLDER: The tortious interference. It's - - it's why they were interfering with these contracts.

THE COURT: So now you're talking about count two.

MR. HOLDER: I'm talking about count two, yes, sir.

THE COURT: Okay. I'm just I'm trying to as best I can make the record clear about what your…

MR. HOLDER: I understand.

THE COURT: …argument is. Okay?

MR. HOLDER: Okay.

THE COURT: That's all. I'm - - and it, Mr. Holder, please don't feel like I'm talking down to you.

MR. HOLDER: I don't think you are. It's just - - it's I think we're not getting each other. It's like a little frustrating and I get…

THE COURT: It is…

MR. HOLDER: I get it.

THE COURT: I know you're frustrated with me, and I'm frustrated with you. But that's okay. We're working through it.

MR. HOLDER: I don't have 32 years of judicial temperament. I - - I wish I did.

THE COURT: That's okay.

MR. HOLDER: Because you're very good at it.

THE COURT: But we're trying to work through this to get to the end result.

MR. HOLDER: Okay. So count two, Mr. Estes says I didn't plead that against Mrs. Estes. I would point the Court to paragraph 226, 257 and 339.

THE COURT: Hold on, hold on. Remind me again, when - - you filed your seconded amended when?

MR. HOLDER: October 5th.

THE COURT: Okay. Now what's the first paragraph

you want me to look at?

MR. HOLDER: 226, Your Honor.

THE COURT: Okay. Is that the first time Lisa Estes is mentioned?

MR. HOLDER: I'll represent I did a search on my computer of the Complaint, and I just, no, she's - - I know she's mentioned in the parties section.

THE COURT: Yeah, but that…

MR. HOLDER: But - - but, yeah…

THE COURT: That's different.

MR. HOLDER: I think - - I think in the pleadings that's…

THE COURT: Okay. I read 226. What's the next one?

MR. HOLDER: 257.

THE COURT: Okay. What's the next one?

MR. HOLDER: 339.

THE COURT: Okay. And next?

MR. HOLDER: 349.

THE COURT: There isn't a 349. It ends at 347.

MR. HOLDER: That could have been where I wrote - - it should be, let me see what I got here. I'm sorry, well 350 through 352.

THE COURT: All right, let me get back to that. There is no 350 through 352.

MR. HOLDER: I think you might be on the wrong Com-…

THE COURT: Oh, wait a minute. I'm sorry, you picked up - - all right, 3- 357 you said?

MR. HOLDER: Well I had 349 through 3-…

THE COURT: 349.

MR. HOLDER: …52…

THE COURT: Hold on.

MR. HOLDER: …would be the…

THE COURT: All right. Okay.

MR. HOLDER: 353.

THE COURT: I read that.

MR. HOLDER: 35- I'm sorry, 354, 55 and 56.

THE COURT: Okay, that's fine. I don't need to read anything more.

MR. HOLDER: Okay, okay. So I - - I did have the agreement in there. The husband and wife, you know, typically act as a marital unit. I think we went over, you know, my position as far as this collateral attack on 4/30 that Mr. Estes brought up in his case that, you know, I think that's just something between me and Uncle Eddie. I don't know that they have really any say in it. They sort of don't want to - - don't want to avail themselves of the rights here so. So I'm gonna - - I'm gonna say that I do have the

tortious interference sufficiently pled. Okay? We have contracts. I think there's five elements to it. And - - and I'm gonna incorporate my previous papers and responses because I briefed it legally in there. But there's like five elements to tortious interference to establish the contract. They established it independently on multiple behavior, which is, you know…

THE COURT: Which contract is it that you're saying…

MR. HOLDER: The management agreement with my wife and the indemnity and management agreement, the utility relationship and prospective advantage. That's the prospective advantage that - - do you need a minute, Your Honor?

THE COURT: Tortious interference with a contract. So you're saying that somehow the Defendant, it's not the Town of Keedysville…

MR. HOLDER: No.

THE COURT: …interfered with your contract with your wife and with Uncle Eddies.

MR. HOLDER: And with Uncle Eddies. And then - - and then…

THE COURT: Well what contract with your wife was it that they interfered with?

MR. HOLDER: The management agreement. She has these houses. Like I said, she bought the houses. I'm supposed to be putting utilities there. I get to use the property however I want to use it. She's gonna let me build her a house over there. She's gonna give me money for building a house. I'll - - I'll deal with all the subcontractors. I get a percentage of it.

THE COURT: Okay. Did you file the - - your contract with your wife as an exhibit?

MR. HOLDER: I didn't. I didn't do that.

THE COURT: Okay. All right, thank you.

MR. HOLDER: Is that something you would typically do?

THE COURT: Well if there is a written contract, there would certainly have been - - you filed tons of exhibits. And if you're claiming - - if - - if, quite frankly, the only contract that I was aware of and what I - - when I read this thought that you were claiming that they were interfering with your contract with the Town of Keedysville.

MR. HOLDER: Well I am claiming that as well. As far as…

THE COURT: So…

MR. HOLDER: …a prospective advantage. I'm not -

- I'm not claiming that it's per se a contract per se. It's more of the doctrine of consideration to establish that contract. I paid lots of consideration. And, therefore, there would be a de facto contract, I guess I'll call it, de jure - - contract de jure, whatever you want to say, the rights of the parties.

THE COURT: So regardless of whether there's an offer and acceptance, if there's consideration, a contract exists?

MR. HOLDER: Yeah.

THE COURT: Okay.

MR. HOLDER: So the problem with the contract with my wife under Courts and Judicial § 3-409(d), proceeding by declaratory judgment is not permitted in any case in which divorce or annulment of marriage is sought. The contract also is a separation agreement that would be - - be - - it would become part of an absolute divorce. So I don't know that this Court would have authority under the Courts and Judicial. I think I would have to plead that in like a family law court and bring a contract in. We have separate, you know, management contracts for the properties.

THE COURT: The separation agreement can be brought in family law. That's correct.

MR. HOLDER: Okay.

THE COURT: But if it's a - - if it constitutes a contract, it can be enforced in other ways.

MR. HOLDER: Okay, so part of that would be enforced through here and this - - this proceeding and that tortious interference with that contract.

THE COURT: And that somehow these folks knew not only that you had a separation agreement but the terms thereof.

MR. HOLDER: Yeah, Frederick admitted to it in his letter to DLLR that I placed in the record that he was doing Plat 1095 for the separation agreement. He was fully aware of every term in that contract, what had to happen, the sewer. He knew all of that. That's pled into the Complaint. It's in the record, DLLR letter. He knew - - Mr. Frederick even knew that somehow I was having public information disputes with the Town of Keedysville at that time. So they were very well aware and on notice of…

THE COURT: Okay.

MR. HOLDER: …of what was going on.

THE COURT: All right.

MR. HOLDER: So we have these contracts. They know about these contracts. Okay, so that's - - that's - - you got to number two. Right? Hurdle

number two is they have to know about them. That's pled and they know about them. Okay? They had to do things to interfere with them. Well if you tell the Town there's no easement when there really is an easement, that's pretty unlawful. That's, you know, deceitful to the Town. The Town should know there's an easement there. Should - - I think he's just trying to hide his boundary using 25 feet to the west and, you know, messed up like two developments and stuff. It shouldn't, you know, and he should still say, "Well I'm - - I'm working for the Town. I'm gonna give you an honest answer here. So, yeah, there's - - there's an easement here. I know it blows my property descriptions apart but fine." That's - - that goes into the independent unlawful contract, and I was injured. I mean I - - I've spent hundreds of thousands of dollars over the years.

THE COURT: Don't get - - this isn't about whether you're injured or not.

MR. HOLDER: Okay. All right, well I think that's part of…

THE COURT: You - - you've pled that you are injured.

MR. HOLDER: I pled that I was injured.

THE COURT: That's right.

MR. HOLDER: That's correct. I pled that I was injured. We want to do discovery and see what that injury is, fine. You know? But without having discovery on this case, there's so much clandestine things going on with count two. I - - I don't - - I don't know how I could get any more specific than what I did. I don't want to expand this Complaint anymore. I wanted to keep it nice and tight. And they keep asking for more particulars and more particulars. Trust me, I didn't want to write that whole thing, Your Honor. So that's - - that's the count two.

And I guess we're gonna get into count three with this breach of Town of Keedysville.

THE COURT: Well, yeah, you don't have to, but they've asked me for dismiss it.

MR. HOLDER: I know. And I'm gonna tell you there was a misstatement, and I don't think Mr. Rynd did it purposefully. But there - - and Mr. Kuczynski might - - there's a resolution raising the $1,000 to $10,000, and I put that in the record. So he's saying the contract has to be $1,000. But there - - it's - - it's part of the public record. I placed it in this record. It actually - - it's $10,000 by resolution of the Town of Keedysville. And - - and I'm not saying there was any…

THE COURT: And when's the resolution?

MR. HOLDER: It just says that…

THE COURT: When? When?

MR. HOLDER: Oh, I'm just gonna go ahead and grab it here.

THE COURT: Yeah, because it's - - I don't know…

MR. HOLDER: It's public record.

THE COURT: …if it was something that's recent or something from a while ago and…

MR. HOLDER: I think it was like in 2- maybe 2001. I can get you the liber folio…

THE COURT: But these facts were prior to that. So if he's talking about it, he would have been talking about what it was before this. Am I correct?

MR. HOLDER: No, no. I'm talking this resolution…

THE COURT: One second, let me…

MR. KUCZYNSKI: Your Honor, all he - - all he's talking about is the bid limit in the Charter originally was $1,000.

MR. HOLDER: Yes.

MR. KUCZYNSKI: I say bid limit, that's how we refer to it. But the…

THE COURT: Okay.

MR. KUCZYNSKI: …the amount that is necessary to have a contract in writing. At some point, it may

very well - - if he put that into the record, it's very well that the Town of Keedysville amended its Charter as it can do and raised that limit as most towns have in modern times to…

THE COURT: Sure.

MR. KUCZYNSKI: …$10,000. But either way, the contract that would be involved here certainly would have exceeded $10,000 so.

THE COURT: Oh, okay. All right.

MR. HOLDER: It's Liber 10, folio 1120.

THE COURT: But - - but it - - isn't it a distinction without a difference? In other words, it doesn't matter whether it's $1,000 or $10,000.

MR. HOLDER: It - - I think it does because I think that the contract itself, I think we could take judicial notice of the fact that we were in COVID. I don't think the mayor knew. Like materials went up exponentially. We're talking about $14,188. And I - - and I pled I at least bought $4,189 of material because they have an estimate of core and main that's in there. I pled that in. That's a fact that I've at least - - my - - my materials was at least $4,189 of the $14,188. That takes it down to $9,999 at least. It's probably less, but it just gets you below that threshold for a written contract. And that's the

well-pled facts. I think they're accurate. I think I have a core and main estimate from the Town of Keedysville. I got that public record. I think I can undisputably prove under summary judgment if I have to that this contract was less than $10,000. Keedysville's not asking for summary judgment. I put the facts in the record. But they're not asking. I -- I placed - - it's Liber 10, folio 1120. And it was…

THE COURT: So in other words, if a contract says that the Town is going to do work or supply services or whatever in the amount of $9,999, and you to - - so that the contract can be completed are gonna supply another $4,000 some odd dollars?

MR. HOLDER: $4- $4,000…

THE COURT: That that is a contract for only $999 and not the full amount of money that it requires to complete the project. That's what your argument is? I'm just trying to understand.

MR. HOLDER: I would think, yeah, because the Town's only in - - they're only in for the $10,000. I'm in for the 5 when you got a contract.

THE COURT: No. They're - - if they start into it and you don't supply it, then they're stuck.

MR. HOLDER: They can't be because I'm - - I'm sorry, but they couldn't be because that was part of

it. If I don't supply it, I - - I breached it.

MR. RYND: Your Honor, just very briefly, paragraph 102 of the Second Amended Complaint says the water contract was valued at approximately 30k because the bid documents reflect the Town of Keedysville agreed to pay the winning bidder approximately 60k for the materials. So we're - - we're over the limit.

THE COURT: Thank you. Okay, go ahead.

MR. RYND: In any respect.

MR. HOLDER: And that's what…

THE COURT: You - - you pled it.

MR. RYND: On the face of the pleading.

MR. HOLDER: That's in today's value, Your Honor. That's in today's, you know…

THE COURT: Counsel, is…

MR. RYND: On - - on the face of the pleading, Your Honor.

THE COURT: Yeah. I was gonna say, but that's what you pled.

MR. HOLDER: Fine.

THE COURT: Okay.

MR. HOLDER: Okay, fine.

THE COURT: Go ahead.

MR. HOLDER: Then, you know, what was the mayor doing? Why did he send me an email offering? Was he

- - was he misrepresenting? Was he trying to induce me? Because I was certainly induced. I certainly acted upon the good mayor's word and bought $5,000 or more of piping to do this. I paid Fred Frederick thousands and thousands of dollars in drawings to do this. I set up easements to do this. I litigated easement disputes with my neighbors to get the sewer line in. I did everything I possibly could to accommodate the Town of Keedysville to do this on the good mayor's word. And I don't think - - I think he meant to enter into a contract. I think that, you know, if we got put - - I mean if it's parol evidence, you know, I - - I don't think we can enter that here. I mean the mayor's the drafter of the contract. You got to construe it against the Town. He's the one that put the email in. He's the one that wrote the paper. You go back to contract law, we got the four corners of the letter. What does it say? It says, "If you do this, I'll do this." I did what I was supposed to do. I don't know how much more you can do for a contract to enforce it against a mayor and a town. I mean I get the stat- the - - the legislature doesn't want to enact ineffective laws. I get it. According to Courts and Judicial Proceeding, you know, they put it and I accept, I acknowledge that principle

of law. Okay? They put it in there. It's there.

MR. KUCZYNSKI: Your Honor, may I be heard? Most of what he's just said, I would object to and base - - he's claiming that somehow there's been a misrepresentation by the Town. What he's just put in is a complete misrepresentation of the facts even as he's alleged them. And I know this is not a test- you know, evidentiary hearing, and I'm deferring to counsel on this as Chief counsel. But I have to raise the objection, and I have to proffer that in this particular situation, this is a scenario where there's a water line that was installed to serve the property that's either owned by him, not owned by him, titled by his wife, not titled by his wife or somebody else.

THE COURT: I think he told me it was titled to Uncle Eddies.

MR. KUCZYNSKI: Well but it's not. So it's…

THE COURT: It's not?

MR. KUCZYNSKI: No. So it's - - it was over $200,000 installation of a water pipe. The Town of Keedysville is in the water business. The Town of Keedysville is not in the sewer business. The County provides sewer. The reality here is the trench was open. The water line was installed. He refused to pay the inspection and permit fees to the County.

They didn't put the pipe in. The Town had no choice but to cover the ground, period. There was no contract. All right?

THE COURT: I…

MR. KUCZYNSKI: It was a courtesy to him that was being extended. And if we're gonna talk about the realities of it, it was extended because his father-in-law was the Assistant Mayor and Chairman of the Water Board. So when he didn't perform, and he's talking about the four corners or terms of the contract, which is, you know, there was no contract.

THE COURT: Right.

MR. KUCZYNSKI: His level of performance was non-existence, which is absolutely why the statute of limitations is not…

THE COURT: Well the bottom line, email can't make…

MR. KUCZYNSKI: Yeah.

THE COURT: …a contract.

MR. KUCZYNSKI: And the statute of limitations bars him. Is not a draconian effect.

THE COURT: Right.

MR. KUCZYNSI: Thank you.

MR. HOLDER: Okay, so to the extent the email doesn't make a contract. Okay?

THE COURT: Right.

MR. HOLDER: That's - - we won't call that a ruling, but that's…

THE COURT: Right.

MR. HOLDER: …we're discussing. Okay? So to that extent and to the extent that Mr. Kuczynski's entered pretty much argumentative facts, I would - - I would tell you I wasn't - - it wasn't my intention to misrepresent that the mayor was - - was misrepresenting himself. I should have said considering arguendo, what was the mayor's email really doing if it wasn't to make a contract? Okay? Like on its face, like what's the inference from this email if it wasn't to enter some type of relationship with me?

THE COURT: Relationship with you to put in sewer lines?

MR. HOLDER: To get - - to get a sewer line so we're not polluting up the creek, yeah.

THE COURT: But the city doesn't do sewer lines.

MR. HOLDER: They do. They do. That's a whole separate case. The County refuses to produce an intermunicipality agreement. It falls back on the Town's Charter. There…

THE COURT: All right, well we don't have to go

there. But…

MR. HOLDER: That's the problem.

THE COURT: This case is going to turn on something other than that. So don't worry about it.

MR. HOLDER: Okay, so my - - my - - my point of having the Town here is the facts that I'm bringing for the interference. I did have a prospective - - if it wasn't a contract, I had a prospective advantage. Okay? I had a rela- he said my father-in-law. That would be an advantage whether it's ethical or not. But he says my father-in-law. That would be an advantage. I had it. They interfered. They got involved. That's an admission by counsel on the record. We got a prospective advantage. Frederick is interfering with it. We got - - we got email traffic between Frederick and Levey interfering. We have DLLR letters, Frederick on knowledge of (unintelligible) requests.

THE COURT: You're - - you're trying to argue your case rather than their Motion to Dismiss.

MR. HOLDER: I'm trying to argue what's in the record, pled into the record.

THE COURT: I understand.

MR. HOLDER: I know it's a big pleading. I - - I don't expect you to…

THE COURT: No, it's not - - I'm trying to help you believe it or not.

MR. HOLDER: I believe you.

THE COURT: Go ahead. Can I ask you a question?

MR. HOLDER: Yes, sir.

THE COURT: How much longer do you expect to be?

MR. HOLDER: I mean I - - I really…

THE COURT: No, I'm not trying to cut you off. Because I'm going to hear then from counsel again, and I want to…

MR. HOLDER: Yeah, let me…

THE COURT: …know whether we need to take a break in between all this.

MR. HOLDER: Well let me - - let me just say that as far as Town of - - yeah, I should have just got to the end. But…

THE COURT: No, no, do what you need to do.

MR. HOLDER: I'm gonna - - I'm gonna - - I think I'm gonna get you to a break here. I'm - - so he said - - Mr. Rynd on behalf of the Town said theoretically, okay, because that's not in the record that there was a breach theoretically at this time. But if you look at the specific language of the statute, it's not when the breach occurs, it's when the claim arose. And we all know that - - and Mr. Estes raises

(unintelligible) and statute of limitations, when the violations continuing in nature when the breach and you ask every day for it to get repaired, when the tort continues to happen, we don't have statute of limitations. It's the last act. And - - and I can cite you some case law if you need me to, but it's the last act of the tort or the breach is where your statute limitations would lie. Same as when the claim arose. When Keedysville just all out refused and said, "Look, we're not doing this. We're done. We're not doing this." That's when the claim arose because we're arguing over, "Hey, you said you were gonna do something. You didn't do it. We have a dispute. We're arguing." They can come in here and say there's no contract. I don't know what that email is if it's not.

So that brings us back to the other contract, and that's the Constitution, and that's equal protection under the law, due process. The taking of the property by the intermunici- or the subdivision ordinance, that is just a suit in damages. That's the (Wigin) case out of Eastern Shore. All - - all you need to file was a suit in damages against a municipality if you're asking for constitutional just compensation, indemnification, due process claims,

constitutional claims. The Town has a duty under the Constitution to provide with me protection, denied. Perhaps. Send me an email saying they're gonna do something to induce me to do something and not. I pled under, you know, that would be under Article 19 in that count three, which is why I didn't have a problem saying I'm not coming after them in count one because I'm - - it's really count three. And if you notice, I limited the paragraphs of the Complaint that as to count three. I didn't include the whole Complaint into count three. I tried to keep what I was litigating with Keedysville pretty narrow. I'll - - I'll tell you that that's pretty well subsumed, again, in the 116 case in consolidation in that case with this case would be appropriate. And I would move the Court again for that. And with that, I'll rest.

THE COURT: Certainly.

MR. STEELE: Your Honor, I think I just have a couple of brief things.

THE COURT: Oh, I hope.

MR. STEELE: Number one, consolidation was muted. Right. Number two, Mr. Holder just argued something to the effect of Frederick's knowledge of a contract with between him and Mrs. Holder. You go to paragraph 77 of the - - well first of all, paragraphs 77 of the

Second Amended Complaint, first of all…

THE COURT: Give me a second just to take a look at it real quick.

MR. STEELE: Sure.

THE COURT: So I know what you're talking about when you - - well that has nothing to do with the…

MR. STEELE: Are you on…

THE COURT: …separation agreement of the parties.

MR. STEELE: Well that's exactly right, Your Honor. But Mr. Holder argued that - - that my client had knowledge of this agreement. And this as going through, that's the only paragraph I could find where - - of what might be called, and I do not concede, a…

THE COURT: This is a management agreement, which I would assume, between him and Uncle Eddies.

MR. STEELE: No.

THE COURT: Or to - - to Mrs. - - oh, Mrs. Holder's property.

MR. STEELE: Right.

THE COURT: Let me read this again.

MR. STEELE: Right.

THE COURT: Hold on. I don't know what that thing says.

MR. STEELE: You're - - you're right, Your Honor, that's…

THE COURT: I've read it now four times.

MR. STEELE: Okay, that's one point I was gonna make. The first point I was gonna make is we still going back to the beginning, Mr. Holder did not identify what property he owns, what property Uncle Eddies owns and what property Ms. Holder owns, Mrs. Holder owns. So I don't know that this, secondly, there is no - - no reference to separation agreement, only to a management agreement.

THE COURT: Right.

MR. STEELE: Thirdly, so even if you read it, he says Frederick got its awareness of this agreement when Holder began discussions with FSA through Frederick to locate easements the Town of Keedysville required. I'm not sure that that…

THE COURT: It doesn't tell you anything…

MR. STEELE: …makes any sense.

THE COURT: …to the extent to which…

MR. STEELE: Right.

THE COURT: …he had any authority.

MR. STEELE: Right. Now…

THE COURT: I don't know what authority he did have.

MR. STEELE: Exactly right. Now but also, Your Honor, he ties it all in at the end in accordance with

the utilities relationship, which I'll defer to counsel for Keedysville about that, an engineer meant through utilities to Mrs. Holder property depicted on Plat 10955. That's the plat that Judge Wilkinson and this Court have said this boundary was correctly decided. The entirety of the Little Antietam Creek is on Mr. Estes' property and none of it is on Uncle Eddies' property. This is the whole deed overlap and fraudulent concealment argument that Mr. Holder has litigated and lost and before two different courts, two different judges in this courthouse. So…

THE COURT: Well I didn't make a substantive ruling. I adopt Judge Wilkinson's as…

MR. STEELE: Right.

THE COURT: You know, which I - - I think I have to do.

MR. STEELE: Right. And that's, okay, Your Honor, I'll - - I'll - - I will acknowledge that that's what you did. But the point is, you know, among other things, that re-raises the issue of statute of limitations because I - - I don't have the Plat 10955 in front of me, but I remember making the argument in April of 2023 that the date of that - - of that plat was more than three years before the filing of the original Complaint in this. So no matter how you

slice it, there's no basis to pursue Frederick Siebert and Associates or Frederic Mark Frederick under count two in this case.

The last thing I would say, Your Honor, and I don't - - well two - - two things that I'm confident the Court will say you don't want to hear me talk about them, number one is the whole ownership of Uncle Eddies issue and, number two, Mr. Holder's repeated insistence that in June of 2021, that Frederick made declarations under oath about - - about whether Mr. Holder's the one who ordered the survey. I can address both of those. I'm not sure that either one of them is before the Court.

THE COURT: Right.

MR. STEELE: So unless you want to hear from it, I'll sit down.

THE COURT: I don't need to. Thank you.

THE COURT: Mr. Estes, do you have anything else you want to say or just adopt his arguments?

MR. ESTES: No, unless I'm happy to answer any questions that you may have.

THE COURT: All right, thank you.

MR. ESTES: Very well.

MR. RYND: Just very briefly, Your Honor, a couple of things. I would submit to the Court that the

breach to the extent there had been a contract, which there wasn't, Mr. Holder would have been on - - aware of the breach when they finished the water project, which our Exhibit A demonstrates occurred in January - - was done by January 2021. I think I heard Mr. Holder just say that he really only intended to sue the Town on count three. That - - that we weren't intended to be included in counts one and two.

THE COURT: Is that correct?

MR. HOLDER: The only way I would - - would do it would be respondeat superior in count two. And that's the only way I had…

THE COURT: Oh, okay.

MR. HOLDER: …them in count two. And you said…

THE COURT: Well then…

MR. HOLDER: So I just sort of accepted what you said. I mean I know there's like a…

THE COURT: Okay.

MR. HOLDER: …outline of all it but, yeah.

THE COURT: I - - I have to rule on that.

MR. RYND: Thank you, Your Honor. And with that, I'll submit.

THE COURT: Thank you very much. All right, it's now - - I intend to rule today and on the record. I can't quite see that clock. What's…

COURT REPORTER: It's 12:00. It's noon, Your Honor.

THE COURT: It's noon?

COURT REPOTER: Yes.

THE COURT: Okay. Then we're going to break now. Let's try to reconvene at 1:30. Hopefully, you'll be done. If you could let the…

MR. KUCZYNSKI: It's just a scheduling conference. So we should be done by 1:15.

THE COURT: Okay, all right, great. So if you're done early, you can give a shout, and I'll try to come out. And if not, I'll see you at 1:30.

MR. KUCZYNSKI: Thank you.

MR. HOLDER: Thank you, Your Honor.

MR. STEELE: Thank you, Your Honor.

(Whereupon this matter went into recess from 12:00 p. m. until 1:26 p. m.)

THE COURT: All right, we're recalling Holder versus Frederick, et al., C-21-CV-23-36. All counsel are present and Plaintiff is present. Get myself comfortable here. Before we get to the ruling, this morning's argument was difficult in a couple of ways. First, and I'm not ruling, to be clear, I'm not ruling that Uncle Eddies is an alter ego of Justin Holder. I've never ruled that in the past. I've got lots of

questions about it, but I haven't ruled that, and I don't need to. However, I will note that Mr. Holder in his argument today conflates himself and Uncle Eddies to suit the specific argument he is making, which made it very difficult to follow the argument because I wasn't clear, was he talking about Uncle Eddies? Was he talking about himself? And what have you. And it was very difficult. And secondly…

MR. HOLDER: I object to that characterization, Your Honor.

THE COURT: You - - this is my decision.

MR. HOLDER: Exception.

THE COURT: And there's no - - we don't have exceptions in Maryland.

MR. HOLDER: Okay.

THE COURT: You can say whatever you want, but this is what I heard, and I also heard classic circular argument. Now count one has already been dealt with based upon representations by the Plaintiff, and I thank him for that.

Number two is, excuse me one second to get this laid out. Count two is the tortious interference with contract, business relations and/or prospective advantage. The contracts that are mentioned in the pleadings are with the Town, with Uncle Eddies and

with Plaintiff's wife. Now first of all, with the Town, it's clear that from the what - - what has been filed and then argued both by the Town and by FSA that FSA was an independent contractor, not an employee. And, therefore, there's no respondeat superior. There's also no allegation that the Town itself interfered with either of the other agreements that he had with either his wife or with Uncle Eddies. There's arguments that they did not perform on contract, but that's much different than a tortious interference.

Now standing, Plaintiff does not own the relevant property, and he admitted that. He owns property that is in that area. I - - I don't - - I'm not clear whether it's contiguous or if it's just in that particular area, but he doesn't own the relevant property. He states that Uncle Eddies, LLC, owns the property, and I accept that representation. The only member of Uncle Eddies, LLC, pursuant to Plaintiff's representation is Kool Bus, LLC. He says this the only - - and this is a trust, I guess the member of Kool Bus, LLC, is a trust for his children. This trust he says was created by - - well I don't know if it was created by, the trustee for the trust is Michael Day, Esquire. I assume he knows Mr. Day is an

attorney. And but he also indicated that he is not a member of Kool Bus as trustee. And I accept all of those representations. Therefore, the pleadings must be brought in Uncle Eddies' name, not in the name of Justin Holder. Therefore, Mr. Holder has no standing to sue.

Now going a little further, of these - - of the contracts, talking about his wife, there's no pleadings setting out the management relationship between Plaintiff and his wife. In other words, there's - - there's not a contract that is - - there's - - it's referred to, but it is not said, in his argument he said it was the marital separation agreement or what's I'll call commonly called a MSA. And I - - I don't think there was anything other than that. And if the MSA is itself a contract and it performs the - - the management contract between Mr. Holder and his wife, well it's a MSA. Is she still your wife? Or is it an ex-wife? I don't want to mischaracterize.

MR. HOLDER: She - - she is still my wife.

THE COURT: Okay, all right.

MR. HOLDER: We haven't filed for an absolute divorce.

THE COURT: And I don't mean anything by that. I

just didn't want to misstate something. That's - - that's the only reason I ask. Then how could they poss- how could anyone be aware of what the MSA says? It's not a public document. Likewise, Estes and FSA could not be aware of a contract that existed between Uncle Eddies and the Town. Because in fact no such contract exists, and I'll get into that more in a minute when I get to count three. And the only contract mentioned regarding Uncle Eddies was his management agreement and specifically, the indemnity clause of the management agreement. And there's no real allegation as to interference by any Defendant with his management agreement with Uncle Eddies. And, therefore, he has failed to state a claim upon which relief can be granted. Quite frankly, I have a hard time when I read the pleadings seeing that these are - - that intentional and willful acts calculated to cause damage, which are all elements. Because it goes from in time after time in these pleadings, it goes from, "This happened," to, "It's fraudulent," or, "It's - - it was done to - - to harm me," and it's missing a step. There's - - there - - it's just not there in between that gets you from the beginning to the end time and time again. So based upon all of that, count two will be dismissed with prejudice.

Count three, once again, we still have the standing problem. I'm not going to go back through it again. It's still the same problem. There's no contract. What we have is an email. We don't even have the whole email. We've got snippets of it in the pleading rather than the whole email. But there has to be under the statute a signed contract. And who would that contract be with? It would have to have been with Uncle Eddies. That puts us back into standing. Because we're talking about Uncle Eddies' property, at least I think we are. I'm - - that's part of the conflation where I have - - where I get confused as to what he's talking about. But and what he is saying is that the acceptance of the contract is his providing the piping. But the - - the - - in order for there to be a contract, it has to be in writing, it has to be signed, and we have none of that. And Defendant really does not have a right to rely on email. Furthermore, I think the statute of limitations applies. Further, I think immunity applies. So for all those reasons, count three is dismissed with prejudice.

All right, so that takes care of our motions from this morning. Now that leaves us with the Motion, which is basically without getting into it, where

you're asking me to set up a gatekeeper. Now if you want, I'll let you argue it. But if you do, I went back and took a look at that again during lunch, I don't think I'm in a position to grant that today. I suggest that you hold it because there's still two Defendants in this case.

And, Mr. Holder, I can only - - and - - and I know you talked about you had had an attorney and the cost and all that. But if you're going to go forward, you really need to talk to an attorney, and I'll tell you why. It's not because you're dumb, because you're not. It's very clear you're a smart guy and you know a lot of law. But it's the application of all that knowledge to the pleadings and going forward and what everything means is where you're having difficulty because, as I said, when I went back and looked at these pleadings, it's like, okay, "He has set out the beginning stage," and then you jump to where you get hurt. And it - - the meat - - the middle air isn't there. And if you do again what you did here, I'm not telling you that I am going to rule a certain way, but you - - because I don't even know whether I'll still have the case. I don't know whether I'll still be alive. Who knows. But you really run the risk, and it's not the gatekeeper, because all that - - all that

is, and I've done that in certain cases. Okay? Where you rule that you file your pleading, it cannot be docketed until it's approved by a judge of the Circuit Court of Washington County. Okay? Now the ones I've done have all been Frederick County, but I've never done that here. But that's - - if I were to rule in their favor, that's the ultimate result in that. But where you really stand the risk is under 1-341. And it's whether your pleadings lack substantial justification. I'm not even gonna talk about bad faith because I'm sure of that either this is bad faith. It's just substantial justification. And I think if you're trying to shoehorn something in, you're really running a big risk of being hit with substantial attorney's fees from them.

MR. HOLDER: I can see that. The balance of - - of, yeah, I can see that.

THE COURT: Right. And - - and I'm not telling you that I'm ruling that way or would rule that way. It's the risk you run. Okay? So and I'm really just saying please before you do anything next, talk to an attorney about the best way to do it. And you really can't talk to Mr. Kline about that.

MR. HOLDER: No, no, no.

THE COURT: I don't know what your relationship

with Mr. Kline is, but he represents Uncle Eddies.

MR. HOLDER: That's right.

THE COURT: And he's on the other side.

MR. HOLDER: That's right.

THE COURT: So you - - you need somebody who would just listen to you, see what's been done and give you good advice.

MR. HOLDER: I got a few guys like that.

THE COURT: Are you willing to just hold off on that? We'll leave it open. You know, if - - if the case dies a death, it dies. If it doesn't, you can bring it back at any time.

MR. STEELE: Yes, Your Honor, I'm - - I'm willing to hold it and argue it in the future if - - if necessary. I guess I would ask, is the Court willing to consider a stay to prevent the case exploding from today going forward?

THE COURT: Stay what? You're not in it anymore.

MR. STEELE: Well…

THE COURT: Are you?

MR. STEELE: Okay.

THE COURT: How do you argue…

MR. STEELE: Good point - - good point, Your Honor.

THE COURT: Okay.

MR. STEELE: I - - I will - - I will try and walk that bridge if I get to it.

THE COURT: And if he - - I - - I wouldn't stay it because I really don't know what relationship he has with his wife. I - - I have not seen that other than the fact that I - - well I shouldn't even assume that you're still - - that you're separated just because you have a MSA because I don't know. But with Uncle Eddies, you know, he says he wants to pursue them for his indemnification, which I - - even if you're gonna do that, you should talk to an attorney because that could come back to bite you. I don't want to go through all the ways that it could, but it really could, not that Uncle Eddies, but if Uncle Eddies then decides to try to come after them, and then boom, you're back into it. And it's - - I'm just telling you word to the wise type of thing. Okay? I guess you - - do you gentlemen have any questions?

MR. STEELE: No, Your Honor.

THE COURT: I didn't figure you did. Mr. Holder, do you have any questions?

MR. HOLDER: No, Your Honor. And I just - - I just wanted to just I know I objected earlier, but…

THE COURT: No.

MR. HOLDER: …I - - I just…

THE COURT: That's fine.

MR. HOLDER: I wasn't trying to do that.

THE COURT: I don't take offense.

MR. HOLDER: And - - and when I think of like my place, it's my family's home. You know? That - - it's - - it's - - I'm not trying to confer rights. That's all.

THE COURT: I don't take offense to stuff like that.

MR. HOLDER: Okay.

THE COURT: Now if you were rude, yeah, I'd take offense. You weren't rude with it. Okay?

MR. HOLDER: I try not to be, and I'm sorry if I raised my voice or…

THE COURT: You objected, stated what it was. You excepted, and I know there - - there are even some Maryland lawyers who will except, even though we don't have that in Maryland, but we don't have that. So you don't need to except.

MR. HOLDER: Okay.

THE COURT: You - - you objected. I overruled it. If you - - if you're going to appeal on something, it's already preserved. The exception is only to preserve for appeal.

MR. HOLDER: Yeah, that's what I was just…

THE COURT: Right. But you don't - - you don't need to.

MR. HOLDER: All right, well you're - - you're a good judge, Your Honor. Thank you.

THE COURT: Well thank you very much. You all have a nice weekend.

MR. RYND: Thank you, Your Honor.

MR. STEELE: Thank you, Your Honor.

MR. KUCZYNSKI: Thank you, Your Honor.

(Whereupon this matter was adjourned at 1:43 p. m.)

OoO

√ Digitally signed by Dee Barnhart

DIGITALLY SIGNED CERTIFICATE

I HEREBY CERTIFY that I reported verbatim by electronic device the proceedings in the matter of **Justin K. Holder versus Frederic M. Frederick, et al., Case No. C-21-CV-23-000036**, in the Circuit Court for Washington County, on March 8, 2024, before the Honorable William R. Nicklas, Jr.

I further certify that the proceedings were transcribed by me to the best of my ability in a complete and accurate manner, and page numbers 1 through 137 constitute the official transcript of the proceedings. In witness whereof, I have affixed my signature this 12th day of April, 2024.

Dee Barnhart
Court Reporter